



# भारत का राजपत्र The Gazette of India

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No. 4] NEW DELHI, JANUARY 19—JANUARY 25, 2014, SATURDAY/PAUSA 29—MAGHA 5, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 27 दिसंबर, 2013

कांआ 230.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में संलग्न अनुबंध में उल्लिखित निम्नलिखित बैंकों की सूचीबद्ध शाखाओं/कार्यालयों को, जिनके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

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[फासं० 11016/13/2013-हिंदी]

डॉ० वेद प्रकाश दूबे, संयुक्त निदेशक (राभा०)

यूनियन बैंक ऑफ इंडिया

राजभाषा कार्यान्वयन प्रभाग, केंद्रीय कार्यालय, मुंबई

राजभाषा नियम 10(4) में अधिसूचनार्थ संस्तुत शाखाएं/कार्यालय

(क)

1. क्षेत्रीय कार्यालय, कानपुर यूनियन बैंक

ऑफ इंडिया

बछरावां शाखा

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रायबरेली रोड, बछरावां

जिला रायबरेली-229301

उत्तर प्रदेश

2. यूनियन बैंक ऑफ इंडिया,

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उत्तर प्रदेश

3. यूनिन बैंक ऑफ इंडिया,  
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4. यूनिन बैंक ऑफ इंडिया,  
लालगंज शाखा  
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5. यूनिन बैंक ऑफ इंडिया,  
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कानपुर-208022 उत्तर प्रदेश
6. क्षेत्रीय कार्यालय, इंदौर  
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8. क्षेत्रीय कार्यालय, भोपाल  
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13. यूनिन बैंक ऑफ इंडिया,  
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14. यूनिन बैंक ऑफ इंडिया,  
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15. क्षेत्रीय कार्यालय, इलाहाबाद  
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16. यूनिन बैंक ऑफ इंडिया,  
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17. यूनिन बैंक ऑफ इंडिया,  
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18. यूनिन बैंक ऑफ इंडिया,  
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19. यूनिन बैंक ऑफ इंडिया,  
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20. यूनियन बैंक ऑफ इंडिया,  
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21. क्षेत्रीय कार्यालय, आगरा  
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22. यूनियन बैंक ऑफ इंडिया,  
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23. यूनियन बैंक ऑफ इंडिया,  
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24. यूनियन बैंक ऑफ इंडिया,  
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25. यूनियन बैंक ऑफ इंडिया,  
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26. यूनियन बैंक ऑफ इंडिया,  
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27. यूनियन बैंक ऑफ इंडिया,  
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28. यूनियन बैंक ऑफ इंडिया,  
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29. यूनियन बैंक ऑफ इंडिया,  
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31. क्षेत्रीय कार्यालय, जबलपुर  
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32. यूनियन बैंक ऑफ इंडिया,  
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33. यूनियन बैंक ऑफ इंडिया,  
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34. यूनियन बैंक ऑफ इंडिया,  
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35. यूनियन बैंक ऑफ इंडिया,  
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36. क्षेत्रीय कार्यालय, गोरखपुर  
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जिला मऊ-221603, यू०पी०

37. यूनियन बैंक ऑफ इंडिया,  
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38. यूनियन बैंक ऑफ इंडिया,  
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39. क्षेत्रीय कार्यालय, मुंबई (पश्चिम) कांदिवली  
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40. यूनियन बैंक ऑफ इंडिया,  
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42. यूनियन बैंक ऑफ इंडिया,  
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43. यूनियन बैंक ऑफ इंडिया,  
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44. क्षेत्रीय कार्यालय, मुंबई (नॉर्थ)  
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45. यूनियन बैंक ऑफ इंडिया,  
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46. क्षेत्रीय कार्यालय, नासिक  
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47. क्षेत्रीय कार्यालय, नागपुर  
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48. क्षेत्रीय कार्यालय,  
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49. क्षेत्रीय कार्यालय, राजकोट  
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50. यूनियन बैंक ऑफ इंडिया,  
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51. यूनियन बैंक ऑफ इंडिया,  
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पिन 370465  
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52. यूनियन बैंक ऑफ इंडिया,  
शापर वेरावल शाखा  
बैंकर्स कंपाउंड  
वीनस इंडस्ट्रियल पार्क  
वेरावल मेन रोड  
जिला राजकोट  
पिन 360024, गुजरात
- भाषिक क्षेत्र 'ग'**
53. क्षेत्रीय कार्यालय, नेल्लूर  
यूनियन बैंक ऑफ इंडिया,  
6-1-66, बाबू आग्रहराम  
श्रीकालहस्ति टाउन,  
चित्तूर जिला, पिन 517644
54. यूनियन बैंक ऑफ इंडिया,  
कोप्पोलु (एफ॰आई॰)  
5-21/2, कोप्पोलु,  
प्रकासम जिला, पिन 523287
55. यूनियन बैंक ऑफ इंडिया,  
टंगटूरु शाखा  
डोर संख्या 13/225, ग्राउंड फ्लोर  
पुराना जी॰टी॰ रोड  
टंगटूरु 523274, प्रकासम जिला,  
दूरभाष संख्या-08592 242009
56. यूनियन बैंक ऑफ इंडिया,  
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दूरभाष संख्या 08565 241112
57. यूनियन बैंक ऑफ इंडिया,  
सर्वे संख्या 129, प्रथम मंजिल  
एम पी डी ओ ऑफिस के सामने,  
मदनपल्ली रोड  
पुंगुनूर 517247  
चित्तूर जिला  
दूरभाष संख्या : 08581 250794
58. यूनियन बैंक ऑफ इंडिया,  
बालीरेड्डी पालेम शाखा  
मुम्मारेड्डीपालेम  
बालीरेड्डी पालेम 524415  
एस॰पी॰एस॰आर॰ नेल्लूर जिला  
दूरभाष संख्या 08624 258055
59. यूनियन बैंक ऑफ इंडिया,  
डोर नं 14-1-155  
म्यूनिसिपल ऑफिस रोड  
मुंबावारी सेंटर,  
चिराला 523155  
प्रकासम जिला  
दूरभाष 08594 233719
60. यूनियन बैंक ऑफ इंडिया,  
जी॰एन॰टी॰ रोड  
अरुणा राइस मिल के सामने पोस्ट  
सुल्लूरपेटा  
सुल्लूरपेटा, नेल्लूर जिला  
आंध्र प्रदेश
61. क्षेत्रीय कार्यालय, विजयवाड़ा  
यूनियन बैंक ऑफ इंडिया,  
राविपाडू शाखा  
सर्वे क्र 284/2 सी  
मेइन रोड, स्थान व डाक  
राविपाडू 522 603  
नरसारावपेट मंडल  
गुंटूर जिला, आंध्र प्रदेश
62. क्षेत्रीय कार्यालय, भुवनेश्वर  
यूनियन बैंक ऑफ इंडिया,  
आस्का शाखा  
प्रमनिता काम्प्लेक्स  
राज्य राजमार्ग 007  
आस्का जिला गंजाम,  
ओरिसा पिन 761110
63. यूनियन बैंक ऑफ इंडिया,  
कमापल्ली शाखा  
साउथको, कोर्टपेटा बरहमपुर  
जिला गंजाम विकास खंड  
बरहमपुर  
ओरिसा पिन 760004
64. यूनियन बैंक ऑफ इंडिया,  
छत्रपुर शाखा  
रंगलिलयम मेन रोड  
छत्रपुर जिला गंजाम  
ओरिसा पिन 761020

65. यूनिन बैंक ऑफ इंडिया,  
जगतसिंहपुर शाखा  
सूर्य मंदिर फैशन  
सनबजाज दीउलिग्रामेश्वर  
जिला जगतसिंहपुर  
ओरिसा पिन 754103
66. यूनिन बैंक ऑफ इंडिया,  
दुबुरी शाखा  
कॉमन फेसिलिटी सेंटर  
जेसीडीएल, पंकपाल स्कवेयर के पास  
जिला जयपुर  
ओरिसा पिन 755026
67. यूनिन बैंक ऑफ इंडिया,  
ढमरा शाखा  
डीसीएफ काम्प्लेक्स, पीओ ढमरा  
विकास खंड ढमरा जिला भद्रक  
ओरिसा 756171
68. यूनिन बैंक ऑफ इंडिया,  
तुरंग शाखा  
प्लॉट नं 5127 (पी) मेन रोड  
तुरंग, जिला अंगुल,  
ओरिसा पिन 759143
69. यूनिन बैंक ऑफ इंडिया,  
दामोदरपुर शाखा  
विकास खंड  
बारीपदा सादर  
जिला मयूरभंज  
ओरिसा 757003
70. यूनिन बैंक ऑफ इंडिया,  
नयागढ़ शाखा  
खांडपाड़ा रोड आरटीओ ऑफिस के सामने  
जिला नयागढ़  
ओरिसा 752069
71. यूनिन बैंक ऑफ इंडिया,  
पुरषोत्तमपुर शाखा  
नारायण प्लाजा  
मेन रोड  
जिला गंजाम  
ओरिसा 761018
72. क्षेत्रीय कार्यालय, मंगलूर  
यूनिन बैंक ऑफ इंडिया,  
कुमटा शाखा  
सर्वे सं 71/1, 73/2, पी०डब्ल्यू०डी० रोड के  
पास, बस्ती पेट, जिला-उत्तर कन्नड़,  
कर्नाटक-581343
73. यूनिन बैंक ऑफ इंडिया,  
पुत्तुर शाखा  
नवाज कॉम्प्लैक्स मेन रोड बोलवार, पुत्तुर  
जिला-दक्षिण कन्नड़, कर्नाटक-574201
74. यूनिन बैंक ऑफ इंडिया,  
बयाङ्गी शाखा संकेत बिल्डिंग, आर०एस०  
संख्या-186, प्लॉट नं 1, गुमनहल्ली रोड,  
जिला-हावेरी,  
कर्नाटक-581 106
75. यूनिन बैंक ऑफ इंडिया,  
भटकल शाखा  
अभय बिल्डिंग, होटल शानबाग रेजीडेंसी,  
राष्ट्रीय राजमार्ग-66, पो० भटकल  
जिला उत्तर कन्नड़, कर्नाटक-581320
76. यूनिन बैंक ऑफ इंडिया,  
भद्रावती शाखा  
महानगर पालिका ऑफिस के पास तरिकेरे  
रोड भद्रावती, जिला शिमोगा,  
कर्नाटक-577301
77. यूनिन बैंक ऑफ इंडिया,  
मल्लिकट्टे शाखा  
जी-3, मोरिषका टॉवर्स, बेन्दुर रोड, मल्लिकट्टे  
जिला-दक्षिण कन्नड़,  
कर्नाटक-575 002
78. यूनिन बैंक ऑफ इंडिया,  
सूलिया शाखा  
नायर कॉम्प्लैक्स गांधीनगर मेन रोड  
सुलिया,  
जिला-दक्षिण कन्नड़,  
कर्नाटक-574 239
79. यूनिन बैंक ऑफ इंडिया,  
सिरसी शाखा  
श्री महामाया एमएस प्रभु भवन, सीटीएस  
नं० 551, 22बी, चनपटना बाजार, सिरसी,  
जिला-उत्तर कन्नड़,  
कर्नाटक-581 401
80. यूनिन बैंक ऑफ इंडिया,  
हुनसुर शाखा  
नं० 2167, शिवाजी राव कॉम्प्लेक्स, सिविल  
कोर्ट के पास, बी एम बाइपास रोड, हुंसुर  
जिला मैसूर,  
कर्नाटक-571 105
81. यूनिन बैंक ऑफ इंडिया,  
हावेरी शाखा  
सी टी एस 3378 ई,

- शिवाजीनगर, तीसरा क्रास, टाउन थाना के सामने, पुणे बंगलूर मार्ग हावेरी, जिला-हावेरी, कर्नाटक-581110
82. यूनियन बैंक ऑफ इंडिया, क्षेत्रीय कार्यालय, मंगलूर पहली मंजिल, कात्यायनी महामाये, अन्नपूर्णेश्वरी काम्प्लेक्स, कलाकुंज सर्कल, मंगलूर (कर्नाटक)-575003
83. क्षेत्रीय कार्यालय, गुवाहाटी यूनियन बैंक ऑफ इंडिया, बीरचन्द्रनगर शाखा बोकाफा रोड ब्लॉक शातिर बाजार टकमाचारा जिला-दक्षिण त्रिपुरा त्रिपुरा-799125
84. यूनियन बैंक ऑफ इंडिया, विशालगढ़ शाखा मकान नं-290497 बार्डोयाली, एंडी नगर, विशालगढ़ रोड अगरतला जिला-पश्चिम त्रिपुरा त्रिपुरा-799003
85. यूनियन बैंक ऑफ इंडिया, धर्मनगर शाखा सदय विला विवेकानंद रोड डाकखाना-नयापारा धर्मनगर जिला-उत्तरी त्रिपुरा त्रिपुरा-799250
86. यूनियन बैंक ऑफ इंडिया, गोलपारा शाखा गोलपारा पंचरत्न रोड जिला-गोलपारा असम-783101
87. यूनियन बैंक ऑफ इंडिया, इटानगर शाखा लेगी कमर्शियल काम्प्लेक्स बैंक तिनाली डाकखाना-इटानगर जिला-पापुपुर अरुणाचल प्रदेश-791111
88. यूनियन बैंक ऑफ इंडिया, कोकराझार शाखा जेडी रोड डाकखाना-कोकराझार जिला-कोकराझार असम-783376
89. यूनियन बैंक ऑफ इंडिया, मोरान शाखा एंटी रोड, एनएच नं-37 मोरान जिला-डिब्रूगढ़ असम-785670
90. यूनियन बैंक ऑफ इंडिया, पल्टन बाजार शाखा विजया मार्केट पल्टन बाजार, जीएस रोड डाकखाना-रेहाबारी गुवाहाटी जिला-कामरूप (शहरी) असम-781008
91. यूनियन बैंक ऑफ इंडिया, सेवा शाखा कामरूप चैंबर रोड फैंसी बाजार, गुवाहाटी जिला-कामरूप (शहरी) असम-781001
92. क्षेत्रीय कार्यालय, हैदराबाद यूनियन बैंक ऑफ इंडिया, अरावल्ली शाखा मकान नं 2-95, अरावल्ली ग्राम पगादापल्ली मण्डल जिला करीमनगर आन्ध्र प्रदेश-505452
93. यूनियन बैंक ऑफ इंडिया, कोंडापरथी शाखा मकान नं 2-1, कोंडापरथी ग्राम, हन्मकोंडा मण्डल, जिला वरंगल, आन्ध्र प्रदेश 506002
94. यूनियन बैंक ऑफ इंडिया, शनिग्राम शाखा मकान नं 1-144, शनिग्राम ग्राम कमलापुर मण्डल जिला करीमनगर आन्ध्र प्रदेश 505 102
95. यूनियन बैंक ऑफ इंडिया, वेल्दी शाखा मकान नं 3-113, वेल्दी ग्राम, मानकोंडुर मण्डल जिला करीमनगर आन्ध्र प्रदेश 505 469

96. यूनियन बैंक ऑफ इंडिया,  
चौलुरु शाखा  
मकान नं० 2-1, चौलुरु ग्राम,  
हिंदूपुर मण्डल  
जिला अनंतपुर,  
आन्ध्र प्रदेश 505211
97. क्षेत्रीय कार्यालय, बेंगलूर  
यूनियन बैंक ऑफ इंडिया,  
गीतम कैंपस  
13/3 व 5/2 ग्रामीण  
नागादेनहल्ली, एनएच 207,  
बेंगलूर ग्रामीण  
बेंगलूर 561203
98. यूनियन बैंक ऑफ इंडिया  
हारगढ़े शाखा  
हारगढ़े ग्रा० व पोस्ट  
जिगणी, बेंगलूर ग्रामीण  
बेंगलूर
99. यूनियन बैंक ऑफ इंडिया  
इंदिरानगर शाखा  
30, आर के प्लाज़ा  
सीएमएच रोड,  
पी०ओ० इंदिरानगर  
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100. यूनियन बैंक ऑफ इंडिया  
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सिरसी सर्कल रोड  
चामराजपेट  
बेंगलूर 560018
101. आन्ध्रा बैंक  
लोकेश्वरम शाखा  
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मुख्य मार्ग, लोकेश्वरम-504104  
अदिलाबाद जिला  
आन्ध्र प्रदेश
102. आन्ध्रा बैंक  
फिरोज़पुर  
नं० 7, द माल,  
फिरोज़पुर  
पंजाब-152001
103. आन्ध्रा बैंक  
रुद्रपुर शाखा  
प्लॉट नं० 2  
आवास विकास  
नैनीताल रोड  
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104. आन्ध्रा बैंक  
मुक्तसर शाखा  
टीएमएच प्लाज़ा,  
बाई पास चौक,  
कोटकपुरा रोड  
मुक्तसर, पंजाब-152026
105. आन्ध्रा बैंक  
पेदवूरा शाखा  
जेड पी हाई स्कूल के सामने  
मेन रोड, पेदवूरा-508266  
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106. आन्ध्रा बैंक  
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107. आन्ध्रा बैंक  
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सर्वे क्रम/239/ए  
पहला माला, खम्मम-इल्लंदु मेन रोड  
बल्लेपल्लि  
खम्मम जिला-507002
108. आन्ध्रा बैंक  
बीदर शाखा  
नं० 19-1-207/30431  
बृंदावन कमर्शियल काम्प्लेक्स  
शिवनगर दक्षिण  
बीदर-585401
109. आन्ध्रा बैंक  
दोड्डकनेल्लि शाखा  
नं० 121/2, शिवास प्लाज़ा  
सरजापुर मेइन रोड  
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बेंगलूर-560 035
110. आन्ध्रा बैंक  
कंजिक्कोड शाखा  
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प्रिकाट मरीडियन के पास  
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कंजिक्कोड-678623
111. आन्ध्रा बैंक  
कण्णूर शाखा  
श्री भैरवेश्वर काम्प्लेक्स  
कण्णूर-यलहंका रोड  
बेंगलूर पूर्व तालूक  
कण्णूर-562149



112. आन्ध्रा बैंक  
कोप्पल शाखा  
नं० 1-11-1032/1, 1032/8  
जवाहर रोड  
कोप्पल जिला  
कर्नाटक-583231
113. आन्ध्रा बैंक  
मत्तिकेरे शाखा  
एम एस आर ई रोड  
मत्तिकेरे  
बेंगलूर-560054
114. आन्ध्रा बैंक  
सिंधनूर शाखा  
आर जी रोड  
सिंधनूर  
रायचूर जिला  
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115. आन्ध्रा बैंक  
पूर्ण प्रज्ञा ले आउट शाखा  
उत्तरहल्लिल, केंगरी मेडन रोड  
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बेंगलूर-560021
116. कोटा सिटी शाखा  
पता: मोरी हनुमान मंदिर के पास,  
पुरानी धान मंडी, कोटा  
पोस्ट-कोटा  
जिला-कोटा, राजस्थान  
पिन-324006
117. कोटा आई एल शाखा  
पता: इन्स्ट्रुमेंटेशन टाउनशिप कोटा,  
पोस्ट-कोटा,  
जिला-कोटा, राजस्थान  
पिन-324005
118. कोटा राजभवन शाखा  
पता: राजभवन रोड शाखा, कोटा  
पोस्ट-कोटा,  
जिला-कोटा, राजस्थान  
पिन-324001
119. रामगंजमंडी शाखा  
पता: बाजार क्रमांक 1,  
रामगंज मंडी कोटा,  
पोस्ट-रामगंजमंडी,  
जिला-कोटा, राजस्थान  
पिन-326519
120. कोटा श्रीरामनगर शाखा  
पता: श्रीरामनगर कोटा,  
पोस्ट-कोटा  
जिला-कोटा, राजस्थान  
पिन-324004
121. कोटा गुमानपुरा शाखा  
पता: 211, गुमानपुरा कोटा  
पोस्ट-गुमानपुरा,  
जिला-कोटा, राजस्थान  
पिन-324007
122. कोटा सीएडी सर्कल शाखा  
पता: दादाबाड़ी, कोटा सीएडी सर्कल,  
कोटा  
पोस्ट-कोटा,  
जिला-कोटा, राजस्थान  
पिन-324007
123. झालरापाटन शाखा  
पोस्ट-झालरापाटन  
जिला-झालावाड़, राजस्थान
124. रिद्धि-सिद्धि नगर, कोटा शाखा  
पता: रिद्धि-सिद्धि नगर कोटा  
पोस्ट-कोटा  
जिला-कोटा, राजस्थान  
पिन-324002
125. कैथून शाखा  
पता: मेन रोड कैथून,  
पोस्ट-कैथून  
जिला-कोटा, राजस्थान  
पिन-325001
126. सुल्तानपुर शाखा  
पता: विद्यापीठ के सामने, मेन रोड सुल्तानपुर,  
पोस्ट-सुल्तानपुर,  
जिला-कोटा, राजस्थान  
पिन-325204
127. श्रीनाथपुरम कोटा, शाखा  
पता: बी-77, बीएसएनएल सर्कल,  
मेन रोड श्रीनाथपुरम  
पोस्ट-कोटा,  
जिला-कोटा, राजस्थान  
पिन-324010
128. बूँदी शाखा  
पता: घास मंडी के सामने,  
धर्मशाला मंडी,  
पोस्ट-बूँदी,

- जिला-बूँदी, राजस्थान  
पिन-323001
129. किशनगंज शाखा  
पोस्ट-किशनगंज,  
जिला-बारां, राजस्थान  
पिन-325216
130. बारां शाखा  
पता: भीमगंज बाजार बारां,  
जिला बारां, राजस्थान  
पोस्ट-बारां, राजस्थान  
पिन-325205
131. छबड़ागुगोर शाखा  
पोस्ट-छबड़ागुगोर,  
जिला-बारां, राजस्थान  
पिन-325220
132. छिपाबरोड शाखा  
पोस्ट-छिपाबरोड,  
जिला-बारां, राजस्थान  
पिन-325220
133. कोटडी बारां शाखा  
पोस्ट-कोटडी बारां व्हाया छबड़ा गुगोर,  
जिला-बारां, राजस्थान
134. स्टेशन रोड शाखा  
पोस्ट-स्टेशन रोड, कोटा जंक्शन, कोटा,  
जिला-कोटा, राजस्थान  
पिन-324 002
135. दिल्ली आंचलिक कार्यालय  
पोस्ट-अहिंसा भवन, न्यू राजेन्द्र नगर  
संकर रोड, नई दिल्ली-110060
136. मालपुरा शाखा  
पोस्ट-मालपुरा,  
जिला-टोंक, राजस्थान  
पिन-304502
137. स्टेशन रोड, अजमेर शाखा  
पता: स्टेशन रोड अजमेर,  
रेलवे स्टेशन अजमेर के पास  
पोस्ट-अजमेर,  
जिला-अजमेर, राजस्थान  
पिन-305001
138. माखुपुरा औद्योगिक क्षेत्र अजमेर शाखा  
पता: माखुपुरा औद्योगिक क्षेत्र, अजमेर  
पोस्ट-अजमेर,  
जिला-अजमेर, राजस्थान  
पिन-305002
139. ब्यावर शाखा  
पता: होटल विनोद के पास,  
स्टेशन रोड, ब्यावर  
पोस्ट-ब्यावर,  
जिला-अजमेर, राजस्थान  
पिन-305901
140. मदनगंज किशनगढ़ शाखा  
पता: मदनगंज किशनगढ़, अजमेर  
पोस्ट-मदनगंज किशनगढ़  
जिला-अजमेर, राजस्थान  
पिन-305801
141. नसीराबाद शाखा  
पता: 61-ए, मेन मार्केट, फेम जी चौक, नसीराबाद  
पोस्ट-नसीराबाद,  
जिला-अजमेर, राजस्थान  
पिन-305601
142. पुष्कर शाखा  
पता: महादेव चौक,  
छोटी बस्ती, पुष्कर  
पोस्ट-पुष्कर,  
जिला-अजमेर, राजस्थान  
पिन-305022
143. पीसांगन शाखा  
पता: महेश्वरी भवन, भेरू दरवाजे के पास  
पोस्ट-पिसांगन  
जिला अजमेर, राजस्थान  
पिन-305204
144. वैशाली नगर, अजमेर शाखा  
पता: 14, अशोक विहार, वैशाली नगर, अजमेर  
पोस्ट-अजमेर,  
जिला-अजमेर, राजस्थान  
पिन-305001
145. अजमेर शाखा  
पता: महर्षि दयानंद सरस्वती विश्व विद्यालय, अजमेर  
पोस्ट-अजमेर,  
जिला-अजमेर, राजस्थान  
पिन-305009
146. पिचौलियां शाखा  
पता: बस स्टैंड के पास, पिचौलियां,  
पोस्ट-पिचौलियां,  
जिला-अजमेर, राजस्थान  
पिन-305022
147. धौला भाटा, अजमेर शाखा  
पता: धौलाभाटा चौराहा,  
पोस्ट-अजमेर,  
जिला-अजमेर, राजस्थान  
पिन-305001

148. ककोड़ शाखा  
पोस्ट-ककोड़,  
जिला-टोंक, राजस्थान  
पिन-304024

149. सावर शाखा  
पता: बस स्टैंड के पास, सावर  
पोस्ट-सावर,  
जिला-अजमेर, राजस्थान  
पिन-305022

150. चन्द्रवरदाई नगर, अजमेर शाखा  
पता: खेल मैदान के सामने, चन्द्रवरदाई नगर, अजमेर  
पोस्ट-अजमेर,  
जिला-अजमेर, राजस्थान  
पिन-305001

151. बिछौछ शाखा  
पोस्ट-बिछौछ,  
जिला-सवाई माधोपुर, राजस्थान  
पिन-322214

152. चक्रेरी शाखा  
पोस्ट-चक्रेरी,  
जिला-सवाई माधोपुर, राजस्थान  
पिन-322034

153. औद्योगिक क्षेत्र शाखा, कोटा  
पोस्ट-ए-3, औद्योगिक क्षेत्र शाखा, कोटा  
जिला-कोटा, राजस्थान  
पिन-324007

#### MINISTRY OF FINANCE

##### (Department of Financial Services)

New Delhi, the 27th December, 2013

**S.O. 230.**—In pursuance of sub-rule (4) of rule 10 of the Official Languages (use for official purpose of the union) Rules, 1976, the Central Government, hereby, notifies the listed branches/offices of the following Banks in the attached annexure, more than 80% of the staff whereof have acquired the working knowledge of Hindi.

Sl. No.	Name of the Banks	Number of Branches/ Offices
1.	Union Bank of India	100
2.	Andhra Bank	15
3.	State Bank of Bikaner & Jaipur	38
<b>Total</b>		<b>153</b>

[F.No. 11016/13/2013-Hindi]  
DR. VED PRAKASH DUBEY, Jt. Director (OL)

#### UNION BANK OF INDIA

Official Language Implementation Division, Central Office, Mumbai Branches/Offices recommended for notification under Official Language Rule 10(4)

#### Linguistic Region 'A'

##### Sl. No. Name & Address of Branch/Office

1. Regional Office, Kanpur  
Union Bank of India,  
Bachhrawan Branch  
Patel Nagar Colony  
Raebareli Road, Bachhrawan  
Dist Raebareli-229301  
Uttar Pradesh
2. Union Bank of India,  
Harchandpur Branch  
Railway Station Road  
At and Post Harchandpur  
Dist Raebareli-229303  
Uttar Pradesh
3. Union Bank of India,  
Madhupuri Branch  
Dalmau Road  
Post Munshiganj  
Dist Raebareli-229405  
Uttar Pradesh
4. Union Bank of India,  
Lalganj Branch  
Near Behta Chauraha  
At & Post Lalganj  
Dist Raebareli-229206  
Uttar Pradesh
5. Union Bank of India,  
Guraini Branch  
15-MIG D Block  
Main Road  
Kanpur-208022  
Uttar Pradesh
6. Regional Office, Indore  
Union Bank of India,  
Tigaria Sancha Branch  
Post Bangar  
Village Tigaria Sancha  
Dist Dewas (M.P.) 455001
7. Union Bank of India,  
Kadwali Bujurg Branch  
Post Mangalia  
Tehsil Sanver  
Village Kadwali Bujurg  
Dist Indore (M.P.) 453771

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| <p>8. Regional Office, Bhopal<br/>Union Bank of India,<br/>Bhind Branch<br/>Vidyavati Complex, Bangala Bazar<br/>PO Bhind,<br/>Dist. Bhind<br/>Madhya Pradesh-477001</p> <p>9. Union Bank of India,<br/>Karond Branch,<br/>M/S. PGH International Pvt. Ltd.,<br/>Peoples World<br/>Bhanpur Karond Road,<br/>PO M.L. Nagar<br/>Huzur, Dist, Bhopal<br/>Madhya Pradesh-462038</p> <p>10. Union Bank of India,<br/>Badi Branch<br/>Ward No. 11, Main Road<br/>Post-Badi, Dist. Raisen<br/>(Madhya Pradesh)<br/>Pin-464665</p> <p>11. Union Bank of India,<br/>Datia Branch<br/>Tanya Palace Hotel<br/>Near Collectorate, Civil Line Road<br/>Datia (MP) Pin-475661</p> <p>12. Union Bank of India,<br/>Sojana Branch<br/>Special Area Development Authority<br/>Shitla Sahai Administrative Bhawan<br/>Village: Sojna, Dist: Gwalior<br/>(MP) Pin-474001</p> <p>13. Union Bank of India,<br/>District Court Branch<br/>District Court<br/>Gwalior (MP)<br/>Pin-474001</p> <p>14. Union Bank of India,<br/>Basoda Branch<br/>In Fron of Govt. SGSPG College<br/>Bareth Road, Kalabagh Ganj<br/>Basoda, Dist: Vidisha (MP)<br/>Pin-464221</p> <p>15. Regional Office, Allahabad<br/>Union Bank of India,<br/>Jhunsi Branch, Chak Hariharan,<br/>G.T. Road, Jhunsi<br/>Distt. Allahabad<br/>Uttar Pradesh</p> <p>16. Union Bank of India,<br/>Chunar Branch, Saddapur Mohana, Post-<br/>Chunar,<br/>Distt. Mirzapur</p> | <p>17. Union Bank of India,<br/>Babuganj Branch<br/>Post-Babuganj<br/>Tahsil-Phulpur<br/>Dist.-Allahabad, Uttar Pradesh</p> <p>18. Union Bank of India,<br/>Shankargarh Branch, Ram Bhavan<br/>Chauraha,<br/>Shivrajpur Road, Post-Shankargarh,<br/>Dist.-Allahabad-Uttar Pradesh 212108</p> <p>19. Union Bank of India,<br/>Ghurpur Branch<br/>Vill. &amp; Post-Ghurpur<br/>Tehsil-Bara<br/>Dist-Allahabad, Uttar Pradesh</p> <p>20. Union Bank of India,<br/>Itawa Uparwar Branch, Vill-Itawa, Opp.-<br/>Balgovind Petrol Pump, Post-Maharajganj,<br/>Dist.-Sant Ravidas Nagar (Bhadohi),<br/>Uttar Pradesh</p> <p>21. Regional Office, Agra<br/>Union Bank of India,<br/>Sambhal Branch<br/>Alamsaray, Near Reliance Petrol Pump<br/>Bahajoi Road<br/>Sambhal-244302</p> <p>22. Union Bank of India,<br/>Iglas Branch<br/>Hatharas Road,<br/>Near Singhal Dharmakanta,<br/>Iglas Distt. Aligarh-202124</p> <p>23. Union Bank of India,<br/>Pooranpur Branch<br/>Rajaganj Block Road<br/>Pooranpur,<br/>Dist. Pilibhit-262122</p> <p>24. Union Bank of India,<br/>Bahedi Branch<br/>Before Ratan Talkies<br/>Nainital Road<br/>Bahedi, Distt. Bareilly-243201</p> <p>25. Union Bank of India,<br/>Fareedpur Branch<br/>Near Shyam Sundar Kanya Inter College,<br/>Main Road Fareedpur<br/>Dist. Bareilly-243503</p> <p>26. Union Bank of India,<br/>Aonla Branch<br/>Ramnagar Road</p> |
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|     | Sargam Talkies<br>Aonla-243301  | 36. | Regional Office, Gorakhpur<br>Union Bank of India,<br>Kunda Sarifpur Shakha<br>Post Sinh Ebrahimbad<br>Post Madhuban<br>Jilaa-Mau 221603 UP  |
| 27. | Union Bank of India,<br>Khandouli Branch<br>Hathras Road,<br>Etmadpur<br>Khandauli-282126   | 37. | Union Bank of India,<br>Chistipur (Kopanganj Branch)<br>Post Kopaaganj<br>Jila 275305  |
| 28. | Union Bank of India,<br>Bisauli Branch<br>Badaun Road<br>Opposite Ramleela Ground<br>Bisauli -43720                                 | 38. | Union Bank of India,<br>Surharpur Branch<br>At & Post Surharpur<br>Dist.: Mau<br>Pin-276403 (UP)   |
| 29. | Union Bank of India,<br>Nawabganj Branch<br>Pilibhit bypass Road,<br>Near C.O. Office<br>Nawabganj-243406                           | 39. | Regional Office, Mumbai (W)<br>Kandivli (E), Mumbai Union Bank of India,<br>Jogeshwari West Branch<br>Shop No. 6, 7 Ayesha Towers, S.V. Road<br>Near MTNL<br>Jogeshwari West, Mumbai 400102<br>Tel: 022 26763060 |
| 30. | Union Bank of India,<br>Ujhanee Road<br>Badaun Road<br>Before SBI<br>Ujhanee-243639   | 40. | Union Bank of India,<br>Mid Corporate Jogeshwari Branch<br>Shop No. 6, 7 Ayesha Towers<br>S.V. Road, Near MTNL<br>Jogeshwari West, Mumbai 400 102<br>Tel: 022 26793942   |
| 31. | Regional Office, Jabalpur<br>Union Bank of India<br>Civil Lines Sagar Branch<br>Hotel Sangum Campus<br>5 Civil Lines<br>Sagar, M.P. | 41. | Union Bank of India,<br>Mid Corporate Borivali Branch,<br>Shop No. 1 to 5 Orchid, Ground Floor<br>Carter Road No. 7, Borivali East<br>Mumbai 400 066<br>Tel. No. 022 28641001                                    |
| 32. | Union Bank of India,<br>Adhartal Branch,<br>Near Vimal Nursing Home,<br>Main Road, Adhartal,<br>Jabalpur-Pin Code 482004            | 42. | Union Bank of India,<br>Virar West Branch<br>Shop No. 8-13, Yashwant Heights<br>New India Co. Op Lane<br>Virara West, Thane-401303<br>Tel. No. 9930100470  |
| 33. | Union Bank of India,<br>Dhanvantari Nagar Branch<br>Plot No. 154, Dhanvantari Nagar<br>Garha Road<br>Jabalpur-482003                | 43. | Union Bank of India,<br>Laokhandwala Complex Branch<br>Shop No. 63, 64, 65<br>Centrium Shopping Centre<br>Lakhandwala Complex<br>Kandivli East<br>Mumbai 400101<br>Tel. No. 022 29650010                         |
| 34. | Union Bank of India,<br>Panagar Branch<br>N.H. 7 Main Road<br>Shivaji Ward<br>Jabalpur-483220                                       |     |  |
| 35. | Union Bank of India,<br>Jabalpur Road Katni Branch<br>M.S.R. Groups<br>M.M. Chaubey Ward<br>Jabalpur Road<br>Katni-483551           |     |  |

44. Regional Office,  
Mumbai (N)  
Union Bank of India,  
Kalher Branch  
Ambika Bhavan, Shop No. 1 & 2  
Old Agra Road, Kalher  
Dist.-Thane Pin-421302
45. Union Bank of India,  
Morba Branch  
Gondewalla Complex,  
At & Post Morba  
Taluka-Mangaon, Dist-Taigad 402117
46. Regional Office, Nasik  
Union Bank of India,  
Ambad Branch  
Ramashreya Apartment,  
Sector E, Plot No. 2 & 3  
Near Bhadrapada Ashvin Nagar  
New CIDCO  
Raje Sambhaji Krida Sankul Road  
Nasik 422009
47. Regional Office, Nagpur  
Union Bank of India,  
Mul Branch  
Angulimal Niwas  
Nagpur Road  
33 Near KVMSEB Office  
Mul Dist., Chandrapur  
Pin 441224
48. Regional Office, Kolhapur  
Union Bank of India,  
Phaltan Branch  
Shivaji Nagar, Ring Road  
Opp. Y.C. College,  
Phaltan-415523  
Dist.-Satara
49. Regional Office, Rajkot  
Union Bank of India,  
Wankaner  
Opp Diagambar Jain Temple  
Pratap Road, Wankaner  
Dist. Rajkot Pin 363621, Gujarat
50. Union Bank of India,  
Sihore Branch  
Shop No. 4, Gopal Complex  
Rajkot Road, Dist. Bhavanagar  
Pin 364 240 Gujarat
51. Union Bank of India,  
Mandvi (Kutch) Branch  
4 Jyoteshwar Park  
Behind Panchvati Swaminarayan Marg

- Mandvi, Dist. Kutch  
Pin 370465 Gujarat
52. Union Bank of India,  
Shapar (Veraval) Branch  
Bankers Compound  
Venus Industrial Park  
Veraval Main Road  
Dist. Rajkot  
Pin 360024, Gujarat

#### Linguistic Region 'C'

53. Regional Office, Nellore  
Union Bank of India,  
6-166 Babu Agraharam  
Srikalahasti Town  
Chittoor District  
Pine 517644
54. Union Bank of India,  
Koppolu (FI)  
5-21/2, Koppolu  
Prakasam Dist  
Pin 523287
55. Union Bank of India,  
Tangutur Branch  
D. No. 13/225, Ground Floor  
Old G.T. Road  
Tangutur-n-523274  
Prakasam Dist  
Phone No.: 08592 242009
56. Union Bank of India,  
Rajampeta Branch  
D. No. 6/460, 461  
Railway Station Road  
Rajampeta 516115  
YSR Kadapa Dist  
Phone No. 08565 241112
57. Union Bank of India,  
Survey No. 129  
First Floor,  
Opp. MPDO Office  
Madamnapalle Road  
Punganur 517247  
Chittoor Dist,  
Phone 08581 250794
58. Union Bank of India,  
Balireddy Palem Branch  
Mummareddyapalem  
Balireddy Palem 524415  
S.P.S.R. Nellore Dist  
Phone No. 08624 258055

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| <p>59. Union Bank of India,<br/>D.No. 14-1-155<br/>Municipal Office Road<br/>Mumbavari Centre<br/>Chirala 523155<br/>Prakasam District<br/>Phone No. 08594 233719</p> <p>60. Union Bank of India,<br/>G N T Road<br/>Opp. Aruna Raice Mill<br/>Sullurpeta (At and Post)<br/>Nellore District,<br/>Andhra Pradesh</p> <p>61. Regional Office, Vijayawada<br/>Union Bank of India,<br/>Survey No. 284/2 C,<br/>Main Road (At &amp; Post)<br/>Ravipadu 522603<br/>Narsarao Pet Mandal<br/>Dist. Gunturu A.P.</p> <p>62. Regional Office, Bhuvneshwar<br/>Union Bank of India,<br/>Aska Branch<br/>Pramonita Complex<br/>State Highway 007, Aska<br/>Dist. Ganjam, Orissa 761110</p> <p>63. Union Bank of India,<br/>Kamapalli Branch<br/>Southco Courtpetta<br/>Berhampur, Dist. Ganjam<br/>Dev. Block Berhampur<br/>Orissa 760004</p> <p>64. Union Bank of India,<br/>Chhatrapur Branch<br/>Rangalilayam, Main Road<br/>Chaatrapur, Dist. Ganjam<br/>Orissa 761020</p> <p>65. Union Bank of India,<br/>Jagatsinghpur Branch<br/>At Surya Mandir Fashion<br/>Sanabazaz Deuligrameswar<br/>Dist. Jagatsinghpur<br/>Orissa 754103</p> <p>66. Union Bank of India,<br/>Dubri Branch<br/>Common Facility Centre<br/>JC DL, Near Pankapal Square<br/>Dist. Jajpur<br/>Orissa 755026</p> | <p>67. Union Bank of India,<br/>Dhamra Branch<br/>DFC Comple, P.O. Dhamara<br/>Dev Block Dhamara, Dist. Bhadrak<br/>Orissa 756171</p> <p>68. Union Bank of India,<br/>Turan Branch<br/>Plot No. 5127 (P) Main Road<br/>Turang,<br/>District-Angul 759143</p> <p>69. Union Bank of India,<br/>Damodarpur Branch<br/>At &amp; PO Damodarpur<br/>Dev Block Baripada Sadar<br/>Dist. Mayurbhanj, Orissa 757003</p> <p>70. Union Bank of India,<br/>Nayagarh Branch<br/>At Khandapara Road<br/>In front of RTO Office<br/>Dist. Nayagarh<br/>Orissa 752069</p> <p>71. Union Bank of India,<br/>Purushottampur Branch<br/>Narayan Plaza, Main Road<br/>Dist. Ganjam<br/>Orissa 761018</p> <p>72. Regional Office, Mangalore<br/>Union Bank of India,<br/>Kumta Branch<br/>PWD Rd., Sy. No. 72/1.73/2.,<br/>Near PWD Road, Bastipeth, Kumta, Dist.<br/>Uttar Kannada,<br/>Karnataka-581 343</p> <p>73. Union Bank of India,<br/>Puttur Branch<br/>Nawaz Complex, Blowar, Puttur<br/>Dist. Dakshin Kannada<br/>Karnataka-574 201</p> <p>74. Union Bank of India,<br/>Byadgi Branch<br/>Sanket Building, R.S. No. 186, Plot No. 1<br/>Gummanhalli Road<br/>Dist. Haveri<br/>Karnataka 106 581</p> <p>75. Union Bank of India,<br/>Bhatkal Branch<br/>Abhay Bldg., Hotel Shanbagh Residency,<br/>NH 66, PO Bhatkal,<br/>Dist. Uttara Kannada, Karnataka-581320</p> |
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| <p>76. Union Bank of India,<br/>Bhadravati Branch<br/>Near Municipal Office, Tarikere Road,<br/>Bhadravati<br/>Dist. Shimoga<br/>Karnataka-577301</p> <p>77. Union Bank of India,<br/>Mallikatte Branch<br/>G-3, Mourishka Towers, Bendur Road,<br/>Mallikatte<br/>Dist-Dakshin Kannada,<br/>Karnataka-575 002</p> <p>78. Union Bank of India,<br/>Sulia Branch<br/>Nair Complex, Gandhinagar Main Road,<br/>Sulia,<br/>Dist. Dakshin Kannada,<br/>Karnataka 239574</p> <p>79. Union Bank of India<br/>Sirsi Branch<br/>Shree Mahamaya, CTS No.<br/>551, 22B, Channapatana Bazaar, Sirsi,<br/>Dist: Uttar Kannada,<br/>Karnataka-581401</p> <p>80. Union Bank of India<br/>Hunsur Branch<br/>2167, Shivaji Rao Complex,<br/>Near Civil Court, B M Bypass Road,<br/>Hunsur, Dist. Mysore,<br/>Karnataka-571105</p> <p>81. Union Bank of India<br/>Haveri Branch<br/>CTS 3378 E,<br/>Shivaji Nagar,<br/>IIrd Cross, Opp. Town Police Station,<br/>Pune- Bangalore Road,<br/>Dist. Haveri<br/>Karnataka-581110</p> <p>82. Union Bank of India<br/>Regional Office, Mangalore<br/>Ist Floor, Katyayani Mahamaye,<br/>Annapoorneshwari Complex, Kalakunj<br/>Circle,<br/>Mangalore<br/>Karnataka-575003</p> <p>83. Regional Office, Guwahati<br/>Union Bank of India<br/>Birchandranagar Branch<br/>Bokafa Road Block</p> | <p>84. Union Bank of India<br/>Bishalgarh Branch<br/>House No. 290497<br/>Bardoali, A.D. Nagar<br/>Bishalgarh Road Agartala<br/>Dist. West Tripura<br/>Tripura-799003</p> <p>85. Union Bank of India<br/>Dharmanagar Branch<br/>Saday Villa<br/>Vivekanand Road<br/>P.O. Nayapara Dharmanagar<br/>Dist. North Tripura<br/>Tripura-799250</p> <p>86. Union Bank of India<br/>Goalpara Branch<br/>Goalpara Pancharatna Road<br/>Dist. Goalpara<br/>Assam-783101</p> <p>87. Union Bank of India<br/>Itanagar Branch<br/>Legi Commercial Complex<br/>Bank Tinali<br/>P.O. Itanagar<br/>Dist. Papumpure<br/>Arunachal Pradesh-791111</p> <p>88. Union Bank of India<br/>Kokrajhar Branch<br/>J.D. Road<br/>P.O. Kokrajhar<br/>Dist. Kokrajhar<br/>Assam-783376</p> <p>89. Union Bank of India<br/>Moran Branch<br/>A.T. Road, N.H.-37<br/>Moran<br/>Dist. Dibrugarh<br/>Assam-785670</p> <p>90. Union Bank of India<br/>Paltan Bazar Branch<br/>Vijaya Market<br/>Paltan Bazar, G.S. Road<br/>P.O. Rehabari Guwahati<br/>Dist. Kamrup(M)<br/>Assam-781008</p> <p>91. Union Bank of India<br/>Service Branch</p> |
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	Kamrup Chamber Road Fancy Bazar, Guwahati Dist. Kamrup(M) Assam-781001	100.	Union Bank of India Mahaveer Arcade Chamrajpet Bangalore-560018
92.	Regional Office, Hyderabad Union Bank of India Aravelli Branch House No. 2-95, Aravelli Village Pagadapalli Mandal, Dist. Karimnagar, Andhra Pradesh-505452	101.	Andhra Bank Lokeshwaram Branch Bahgatsingh Circle Main Road, Lokeshwaram-504104 Adilabad District Andhra Pradesh
93.	Union Bank of India Kondaparthi Branch House No. 2-1, Kondaparthi Village Hanmkonda Mandal Dist. Warangal, Andhra Pradesh-506002	102.	Andhra Bank Ferozpur Branch No. 7, The Mall Ferozpur Punjab-152001
94.	Union Bank of India Shanigaram Branch House No. 1-144, Shanigaram Village, Kamalapur Mandal Dist. Karimnagar, Andhra Pradesh-505102	103.	Andhra Bank Rudrapur Branch Plot No. 2 Avas Vikas Nainital Road Rudrapur
95.	Union Bank of India Veldi Branch House No. 3-113, Veldi Village Mankondur Mandal Dist. Karimnagar, Andhra Pradesh 505469	104.	Andhra Bank Muktsar Branch TMH Plaza, Bye-Pass Chowk Kothakpura Road Muktsar, Punjab-152026
96.	Union Bank of India Chowluru Branch House No. 2-1, Chowluru Village Hindupur Mandal Dist. Anantpur, Andhra Pradesh-51521	105.	Andhra Bank Peddavoora Branch Opp. ZP High School Main Road, Peddavoora-508266 Nalgonda District
97.	Regional Office, Bangalore Union Bank of India Geetham Campus 13/3 and 5/2, Nagadenahalli NH 207, Bangalore Rural Dt. Bangalore 561203	106.	Andhra Bank Hasanparti Branch House No. 144 Main Road, Hasanparti Warangal District-506371
98.	Union Bank of India Haragadde Branch Hargadde V&P Jigani Hobli Anekal Taluk Bangalore Urban Dt. Bangalore	107.	Andhra Bank Ballepalli Branch Survey No. 239/A First Floor, Khammam-Ellanudu Main Road Ballepalli Khammam-507002
99.	Union Bank of India Indiranagar Branch CMH Road, P.O. Indiranagar Dist. Bangalore-560038	108.	Andhra Bank Bidar Branch No. 19-1-207/30431 Brindavan Commercial Complex Shivnagar South Bidar-585401

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| <p>109. Andhra Bank<br/>Doddakanelli Branch<br/>No. 121/2, Shivas Plaza<br/>Sarjapur Main Road<br/>Doddakanelli<br/>Bangalore-560035</p> <p>110. Andhra Bank<br/>Kanjikode Branch<br/>Chedayan Kalai<br/>Near Precot Meridian<br/>Kanjikode West P.O.<br/>Kanjikode-678623</p> <p>111. Andhra Bank<br/>Kannur Branch<br/>Sri Bhairaveswar Plaza<br/>Kannur-Yelahanka Road<br/>Bangalore East Taluk<br/>Kannur-562149</p> <p>112. Andhra Bank<br/>Koppal Branch<br/>No. 1-11/1032/1, 1032/8<br/>Jawahar Road<br/>Koppal District<br/>Karnataka-583231</p> <p>113. Andhra Bank<br/>Mathikere Branch<br/>MSRE Road<br/>Mathikere<br/>Bangalore-560054</p> <p>114. Andhra Bank<br/>Sindhanur Branch<br/>RG Road<br/>Sindhanur<br/>Raichur District<br/>Karnataka State</p> <p>115. Andhra Bank<br/>Poorna Pragna Layout Branch<br/>Uttarhalli, Kengeri Main Road<br/>Poorna Pragna Layout<br/>Bangalore-560021</p> <p>116. Kota City Branch<br/>Post-Near Mori Hanuman Mandir,<br/>Purani Dhan Mandi, Kota<br/>Distt. Kota<br/>(Rajasthan)<br/>Pin.324006</p> <p>117. Kota 1 L Branch<br/>Instrumentation Township, Kota<br/>Post-Kota</p> | <p>Distt. -Kota<br/>(Rajasthan)<br/>Pin-324005</p> <p>118. Kota Rajbhawan Road Branch<br/>Rajbhawan Road, Kota<br/>Post-Kota<br/>Distt.-Kota<br/>(Rajasthan)<br/>Pin-324001</p> <p>119. Ramganj Mandi Branch<br/>Bazar No. 1 Ramganj Mandi Kota,<br/>Post- Ramganj Mandi<br/>Distt.- Kota<br/>(Rajasthan)<br/>Pin-326519</p> <p>120. Kota Shriramnagar Branch<br/>Shriramnagar<br/>Post-Kota,<br/>Distt.-Kota<br/>(Rajasthan)<br/>Pin-324004</p> <p>121. Gumanpura Kota Branch<br/>211, Gumanapura Kota<br/>Post-Kota<br/>Distt.-Kota<br/>(Rajasthan)<br/>Pin-324007</p> <p>122. Kota Cad Circle, Branch<br/>Kota Cad Circle, Kota<br/>Post-Kota,<br/>Distt.-Kota (Rajasthan)<br/>Pin-324007</p> <p>123. Jhalraptan Branch<br/>Post-Jhalrapatan<br/>Distt.-Jhalawad<br/>(Rajasthan)</p> <p>124. Ridhi Sidhi Nagar, Kota Branch<br/>Post-Ridhi Sidhi Nagar Kota,<br/>Distt.-Kota<br/>(Rajasthan)<br/>Pin-324002</p> <p>125. Kaithoon Branch<br/>Main Road Kaithoon<br/>Post-Kaithoon<br/>Distt.-Kota<br/>(Rajasthan)<br/>Pin-325001</p> <p>126. Sultanpur Branch<br/>In Front of Vidya Peeth,</p> |
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|      | Main Road, Sultanpur<br>Post-Sultanpur,<br>Distt.-Kota<br>(Rajasthan)<br>Pin-325204  | 135. | Delhi Zonal Office<br>Ahimsa Bhawan<br>New Rajendra Nagar,<br>Shankar Road<br>New Delhi-110060   |
| 127. | Shrinath Puram, Branch<br>B-77, BSNL Circle, Main Road<br>Shrinathpuram<br>Post-Kota<br>Distt.-Kota<br>(Rajasthan)<br>Pin-324010 | 136. | Malpura Branch<br>Post-Malpura,<br>Distt.-Tonk<br>(Rajasthan)<br>Pin-304502  |
| 128. | Bundi Branch<br>Near Ghas Mandi,<br>Dharamshala Mandi<br>Post-Bundi<br>Distt.-Bundi<br>(Rajasthan)<br>Pin-323001                 | 137. | Station Road Ajmer Branch<br>Station Road Ajmer,<br>Near Railway Station, Ajmer<br>Post-Ajmer<br>Distt.-Ajmer<br>(Rajasthan)<br>Pin-305001 |
| 129. | Kishan Ganj Branch<br>Post-Kishanganj,<br>Distt.-Baran<br>(Rajasthan)<br>Pin-325216  | 138. | Makhupura Industrial Estate, Ajmer Branch<br>Post-Makhupura Industrial Estate, Ajmer<br>Distt.-Ajmer<br>(Rajasthan)<br>Pin-305002          |
| 130. | Baran Branch<br>Bheem Ganj Bazar Baran,<br>Post-Baran<br>Distt.-Baran<br>(Rajasthan)<br>Pin-325205                               | 139. | Beawar Branch<br>Near Hotel Vinon,<br>Station Road Beawar,<br>Post-Beawar<br>Distt.-Ajmer<br>(Rajasthan)<br>Pin-305901                     |
| 131. | Chhabra Gugar Branch<br>Post-Chhabra Gugar,<br>Distt.-Baran<br>(Rajasthan)<br>Pin-325220   | 140. | Madan Ganj Kishangarh Branch<br>Madan Ganj Kishangarh<br>Post-Kishangarh,<br>Distt.-Ajmer<br>(Rajasthan)<br>Pin-305801                     |
| 132. | Chhipa Barod Branch<br>Post-Chhipa Barod<br>Distt.-Baran<br>(Rajasthan)<br>Pin-325221  | 141. | Nasirabad Branch<br>61-A, Main Market, Fame G Chowk<br>Nasirabad<br>Post-Nasirabad<br>Distt.-Ajmer<br>(Rajasthan)<br>Pin-305601            |
| 133. | Kotri Baran Branch<br>Post-Kotri Baran, <i>via</i> Chhabra Gugar<br>Distt.-Baran<br>(Rajasthan)                                  | 142. | Pushkar Branch<br>Mahadev Chowk,<br>Chhoti Basti, Pushkar<br>Post-Pushkar,<br>Distt.-Ajmer<br>(Rajasthan)<br>Pin-305022                    |
| 134. | Station Road Branch<br>Post-Station Road, Kota Jn., Kota<br>Distt.-Kota<br>(Rajasthan)<br>Pin-324002                             |      |  |

143. Pisangan Branch  
Maheshwari Bhawan,  
Near Bheru Darwaja, Pisangan  
Post-Pisangan  
Distt.-Ajmer  
(Rajasthan)  
Pin-305204
144. Vaishali Nagar Branch  
14, Ashok Vihar,  
Vaishali Nagar, Ajmer  
Post-Ajmer  
Distt.-Ajmer  
(Rajasthan)  
Pin-305001
145. Maharshi Dayanand Vishwavidyalaya,  
Ajmer Branch  
Maharshi Dayanand Vishwavidyalaya, Ajmer  
Post-Ajmer  
Distt.-Ajmer  
(Rajasthan)  
Pin-305009
146. Picholiya Branch  
Near Bus Stand, Picholiya  
Post-Picholiya,  
Distt.-Ajmer  
(Rajasthan)  
Pin-305022
147. Dholan Bhata Ajmer, Branch  
Dhola Bhata Chauraha Ajmer,  
Post-Ajmer  
Distt.-Ajmer  
(Rajasthan)  
Pin-305001
148. Kakod Branch  
Post-Kakod,  
Distt.-Tonk  
(Rajasthan)  
Pin-304024
149. Sawar Branch  
Near Bus Stand, Sawar  
Post-Sawar  
Distt.-Ajmer  
(Rajasthan)  
Pin-305022
150. Chandra Vardai Nagar, Ajmer Branch  
Post-Opposite Play Ground,  
Chandra Vardai Nagar, Ajmer  
Distt.-Ajmer  
(Rajasthan)  
Pin-305001

151. Bichhochh Branch  
Post-Bichhochh  
Distt.-Sawai Madhopur  
(Rajasthan)  
Pin-322214
152. Chakeri Branch  
Post-Chakeri  
Distt.-Sawai Madhopur  
(Rajasthan)  
Pin-322034
153. Industrial Estate Branch, Kota  
Post-A-3, Industrial Estate Branch, Kota  
Distt.-Kota,  
(Rajasthan)  
Pin-324007

नई दिल्ली, 3 जनवरी, 2014

**का०आ० 231.**—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9 के उप-खंड (1) और (2) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार भारतीय रिजर्व बैंक से परामर्श के पश्चात् एतद्द्वारा, श्री जी०वी० मणिमारण (जन्म तिथि: 05.05.1961), प्रबंधक, केनरा बैंक को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा केनरा बैंक में उनके अधिकारी के पद पर बने रहने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, केनरा बैंक के निदेशक मण्डल में अधिकारी कर्मचारी निदेशक के रूप में नियुक्त करती है।

[फा० सं० 6/46/2013-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 3rd January, 2014

**S.O. 231.**—In exercise of the powers conferred by clause (f) of sub-section 3 of Section 9 of The Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970/1980 read with sub-clause (1) & (2) of clause 9 of The Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government after consultation with the Reserve Bank of India, hereby re-appoints Shri G.V. Manimaran (DoB: 05.05.1961), Manager, Canara Bank, as Officer Employee Director on the Board of Directors of Canara Bank, for a period of three years, from the date of notification of his appointment or until he ceases to be an officer of the Canara Bank, or until further orders, whichever is the earliest.

[F. No. 6/46/2013-BO-I]

VIJAY MALHOTRA, Under Secy.

## उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

( उपभोक्ता मामले विभाग )

( भारतीय मानक ब्यूरो )

नई दिल्ली, 7 जनवरी, 2014

**का.आ. 232.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

## अनुसूची

क्र. सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनुभाग	वर्ष
1	2828266	30-11-2013	मेसर्स एस.जे. फूड्स एंड एग्रो इंडस्ट्रीज गट नं. 397 घनतंगरी तालुका एवं जिला उस्मानाबाद महाराष्ट्र 413501	पैकेजबंद पेयजल ( पैकेजबंद प्राकृतिक मिनरल जल के अलावा )	14543			2004
2	2828367	29-11-2013	मेसर्स कृष्णराज मिनरल वॉटर मिलकत नं. 3000 स.नं. 96/13बी मंचर, आंबेगांव जिला पुणे महाराष्ट्र 410503	पैकेजबंद पेयजल ( पैकेजबंद प्राकृतिक मिनरल जल के अलावा )	14543			2004
3	2830859	7-12-2013	मेसर्स अर्जुना बेवरेजेज प्लॉट नं. 2-9-78 सोमेश कॉलनी जिला नांदेड महाराष्ट्र 431601	पैकेजबंद पेयजल ( पैकेजबंद प्राकृतिक मिनरल जल के अलावा )	14543			2004
4	2830960	2-12-2013	मेसर्स आदि प्लास्टिक इंडस्ट्रीज प्रा लि गट नं. 133/14 एवं 121/1 गांव कागल तालुका कागल जिला कोल्हापूर महाराष्ट्र 416216	वस्त्रादि-उच्च घनत्व पोलीइथलीन बुने कनडे से बने तिरपाल -विशिष्ट	7903			2011
5	2836669	21-12-2013	मेसर्स महेश एग्रो प्लास्ट प्लॉट नं. ई-45-9 कुरकुंभ एमआयडीसी तालुका दौंड जिला पुणे महाराष्ट्र 413802	पेय जल की पूर्ति के लिए असुघटित पीवीसी पाइप -विशिष्ट	4985			2000
6	2836568	21-12-2013	मेसर्स लक्ष्मी पाइप एंड प्रोफाइल्स गट नं. 142/1ए जामगांव ( ए ) तालुका बार्शी जिला सोलापूर महाराष्ट्र 413401	पेय जल की पूर्ति के लिए असुघटित पीवीसी पाइप -विशिष्ट	4985			2000
7	2836366	21-12-2013	मेसर्स एसआरएफ बेवरेजेज स.नं. 5/5/1/2/13 कोंढवा बीके तालुका हवेली जिला पुणे महाराष्ट्र 411048	पैकेजबंद पेयजल ( पैकेजबंद प्राकृतिक मिनरल जल के अलावा )	14543			2004

[सं. सीएमडी/13:11]

बी. एम. हनीफ, वैज्ञानिक 'एफ' एवं प्रमुख

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION****(Department of Consumer Affairs)****(BUREAU OF INDIAN STANDARD)**

New Delhi, the 7th January, 2014

**S.O. 232.**—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

**SCHEDULE**

Sl. No.	Licence No.	Grant Date	Name & Address of the Party	Title of the Standard	IS No.	Part	Section	Year
1	2828266	30-11-2013	M/s S.J. Foods & Agro Industries Gat No. 397 Ghantangri Taluka & District Osmanabad Maharashtra 413501	Packaged drinking water (Other than packaged natural mineral water)	14543			2004
2	2828367	29-11-2013	M/s Krushnraj Mineral Water Milkat No. 3000 S.No. 96/13B Manchar Ambegaon District Pune Maharashtra 410503	Packaged drinking water (Other than packaged natural mineral water)	14543		2004	
3	2830859	7-12-2013	M/s Arjuna Beverages Plot No. 2-9-78 Somesh Colony District Nanded Maharashtra 431601	Packaged drinking water (Other than packaged natural mineral water)	14543		2004	
4	2830960	2-12-2013	M/s Aadi Plastic Industries Pvt Ltd Gat No. 133/14 & 121/1 Village Kagal Taluka Kagal District Kolhapur Maharashtra 416216	Textiles-Tarpaulins made from high density polyethylene woven fabric-Specification	7903		2011	
5	2836669	21-12-2013	M/s Mahesh Agro Plast Plot No. E-45/9 Kurkumbh MIDC Taluka Daund District Pune Maharashtra 413802	Unplasticized PVC Pipes for Potable Water Supplies-Specification	4985		2000	
6	2836568	21-12-2013	M/s Laxmi Pipe & Profiles Gat No. 142/1A Jamgaon (A) Taluka Barshi District Solapur Maharashtra 413401	Unplasticized PVC Pipes for Potable Water Supplies-Specification	4985		2000	
7	2836366	21-12-2013	SRF Beverages S.No. 5/5/1/2/13 Kondhawa BK Taluka Haveli District Pune Maharashtra 411048	Packaged drinking water (Other than packaged natural mineral water)	14543		2004	

[No. CMD/13:11]

B.M. HANEEF, Scientist 'F' and Head

नई दिल्ली, 7 जनवरी, 2014

का०आ० 233.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 5 के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है:-

## अनुसूची

क्र. संख्या	लाइसेंस संख्या	लाइसेंसधारी का नाम व पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
	सीएम/एल-			
			निल	

[सं. सीएमडी/13:13]

बी. एम. हनीफ, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 7th January, 2014

S.O. 233.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each :

## SCHEDULE

Sr.No.	Licence No. CML-	Name and Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of cancellation
			NIL	

[No. CMD/13:13]

B.M. HANEEF, Scientist 'F' and Head

नई दिल्ली, 7 जनवरी, 2014

का०आ० 234.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, को लाइसेंस प्रदान किए गए हैं:

## अनुसूची

क्र. सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भारतीय मानक सं.	भाग	अनुभाग	वर्ष
1	2	3	4	5	6	7	8	9
01	5727477	06/11/2013	ऋद्धांजली ज्वेलर्स लक्ष्मी बाजार, वार्ड नं० डी एच-सी, ऑगुल, ओडिशा-759122	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन-विशिष्ट	1417			1999
02	5727578	06/11/2013	मॉ महालक्ष्मी ज्वेलर्स प्लॉट नं 231/2012 सैलश्री विहार, पोस्ट दमना छाक, खुर्दा, ओडिशा-751016	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन-विशिष्ट	1417			1999
03	5728782	11/11/2013	बक्रेश्वर अलंकार बालंगा, जिला-पुरी, ओडिशा	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन-विशिष्ट	1417			1999
04	5729279	12/11/2013	ओ एच एम पाईप्स प्रा. लि. डी-7, 8, 49 एवं 50, सोमनाथपुर, आईआईटी सेंटर, बालेश्वर, ओडिशा-756001	पेयजल आपूर्ति के लिए अप्लास्टिक पीवीसी-पाइप-विशिष्ट	4985			2000

1	2	3	4	5	6	7	8	9
05	5729784	12/11/2013	बिनय बेवेरेज्स प्लॉट नं० 2149, सराट, बालीपाटना, जिला, खुर्दा ओडिशा-752102	पैकेजबंद पेज जल ( पैकेजबंद प्राकृतिक मिनिरल जल के अलावा)	14543			2004
06	5730365	13/11/2013	वंदना एंटरप्राइजेज रुंगटा गली, पोस्ट, मेन रोड, ब्रजराजनगर, जिला-झारसुगुडा ओडिशा-768216	पैकेजबंद पेज जल ( पैकेजबंद प्राकृतिक मिनिरल जल के अलावा)	14543			2004
07	5730466	15/11/2013	बासुदेव ज्वेलरी बड़ा बाजार, नीमपडा, पोस्ट, नीमपडा, जिला पुरी, ओडिशा-752106	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999
08	5729986	15/11/2013	पैराडाइज ज्वेलर्स रामई टॉकीज़ रोड, होटल पैराडाइज के समीप सिनेमार्हॉल, बोलोंगीर, ओडिशा-767001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999
09	5730062	15/11/2013	मेहर एण्ड संस सम्बलपुर रोड, महादेव मंदिर छोक, बोलोंगीर,	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999
10	5731872	26/11/2013	किरण ज्वेलर्स एण्ड संस मेन मार्केट, उडाला, बारिपडा, जिला- ओंगुल, ओडिशा	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999
11	5731973	27/11/2013	जैसमिन ज्वेलर्स प्लॉट नं० 5एफ/718, सेक्टर 9, सीडीए, वार्ड नं०. सीयूसी डब्ल्यू, पोस्ट- अभिनव बिदनासी, पोस्ट, मार्केट नगर, कटक, ओडिशा-753014	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999
12	5732066	27/11/2013	मॉ संतोषी ज्वेलर्स अटलबिहारी हाई स्कूल के सामने, बासुदेवपुर, जिला-भद्रक, ओडिशा	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999
13	5733371	29/11/2013	न्यू किरण ज्वेलर्स पोस्ट-उडाला, उडाला, जिला-मैयूरभंज, ओडिशा-757041	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999
14	5733876	03/12/2013	साहू ज्वेलरी स्टेशन रोड, पोस्ट- भाष्करगंज, जिला- बालेश्वर, ओडिशा-756001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999



1	2	3	4	5	6	7	8	9
15	5733977	03/12/2013	मदन मोहन ज्वेलर्स बड़ाबाजार, साखीगोपाल, पुरी, ओडिशा-752014	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999
16	5734373	03/12/2013	जलाराम पीवीसी एण्ड पॉलीमर्स (1) प्रा० लि० प्लॉट नं. सी-32, इंडस्ट्रियल एस्टेट, खुर्दा, ओडिशा-752055	पेयजल आपूर्ति के लिए अप्लास्टिक पीवीसी पाइप - विशिष्टि	4985			2000
17	5734171	04/12/2013	जयश्री क्लॉथ स्टोर एंड ज्वेलरी खाता सं० 382/222, प्लॉट नं. 340/3589, वार्ड सं० एएनजीसी पोस्ट, थाना, पल्लाहरा, जिला, ऑगुल, ओडिशा	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999
18	5734474	05/12/2013	रश्मि ज्वेलर्स ओल्ड बस स्टैंड, बिका, सोनेपुर, ओडिशा-767019	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999
19	5734575	05/12/2013	धनलक्ष्मी ज्वेलर्स बड़गड़, मेन रोड, वार्ड सं० 13, सोरदा, जिला- गंजाम, ओडिशा-761109	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999
20	5734676	05/12/2013	रवि प्रुष्टि अलंकार एंड वर्कशॉप, प्लॉट नं० 2382/2585, कुंजाबानगढ़, पोस्ट-थाना- दासपल्ला, जिला, नयागढ़ ओडिशा-752084	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417			1999
21	5736074	10/12/2013	मेसर्स केबल्स (इंडिया) प्रा० लि० बी/5, इंडस्ट्रियल एस्टेट बालेश्वर ओडिशा-756001	वायवीय गुच्छित केबल- 1100 वोल्ट तक और सहित की कार्यकारी वोल्टता के लिए - विशिष्टि	14255			1995
22	5735476	11/12/2013	नेलसन इंडस्ट्रीज प्लॉट नं० 949, डोलिता, पोस्ट, रजिया, जिला- कियोझार ओडिशा-758047	पैकेजबंद पेय जल ( पैकेजबंद प्राकृतिक मिनरल जल के अलावा ) - विशिष्टि	14543			2004
23	5735577	11/12/2013	बीजा स्टील लि० कलिंगानगर इंडस्ट्रियल कॉम्प्लेक्स, जखपुरा, जाजपुर रोड, जिला जाजपुर ओडिशा-755026	तप्त बेल्लित मध्यम एवं उच्च तन्यता के संरचना इस्पात- - विशिष्टि	2062			2011
24	5737783	26/12/2013	शांति पैकेजिंग एंड बेवरेज्स प्रा० लि० बाटगां, बीरहरेकृष्णपुर, पुरी सदर जिला- पुरी, ओडिशा-752002	पैकेजबंद पेय जल ( पैकेजबंद प्राकृतिक मिनरल जल के अलावा ) - विशिष्टि	14543			2004

New Delhi, the 7th January, 2014

**S.O. 234.**—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule :

Sl. No.	Licence No.	Grant Date	Name & Address of the Party	Title of the Standard	IS No.	Part	Section	Year
1	2	3	4	5	6	7	8	9
01	5727477	06/11/2013	Sradhanjali Jewellers At. Laxmibazar, Ward No. DH-C, Angul Odisha-759122	Gold and gold alloys, Jewellery/artefacts- fineness and marking-	1417			1999
02	5727578	06/11/2013	Maa Mahalaxmi Jewellers Plot No. 231/2012, Sailashree Vihar, PO. Damana Chhaka, Khurda Odisha-751016	Gold and gold alloys, Jewellery/artefacts- fineness and marking-	1417			1999
03	5728782	11/11/2013	Bakreswar Alankar At/PO Balanga, District-Puri, Odisha	Gold and gold alloys, Jewellery/artefacts- fineness and marking-	1417			1999
04	5729279	12/11/2013	Ohm Pipes Pvt Ltd Block-D.S.P.A. Complex, Police Line Square, Balasore, Odisha-756001	Unplasticized pvt pipes for potable water supplies	4985			2000
05	5729784	12/11/2013	Binay Beverages Plot Not. 2149, Sarat, Balipatna, District-Khurda, Odisha-752102	Packaged drinking water(other than packaged natural mineral water)	14543			2004
06	5730365	13/11/2013	Vandana Enterprises At:-Rungta Gali PO:-Main Road, Brajarajnagar, District- Jharsuguda, Odisha-768216	Packaged drinking Water(other than packaged natural mineral water)	14543			2004
07	5730466	15/11/2013	Basudev Jewellery At. Badabazar Nimapada, PO. Nimapada, District-Puri, Odisha-759106	Gold and gold alloys, Jewellery/artefacts- fineness and marking-	1417			1999
08	5729986	15/11/2013	Paradise Jewellers Ramai Talkies Road, Near Hotel Paradise At. Cinemahall, Bolangir, Odisha-767001	Gold and gold alloys, Jewellery/artefacts- fineness and marking-	1417			1999

1	2	3	4	5	6	7	8	9
09	5730062	15/11/2013	Meher & Sons At. Sambalpur Road Mahadev Mandir Chhak, Bolangir, Odisha-767001	Gold and gold alloys, Jewellery/artefacts- fineness and marking-	1417			1999
10	5731872	26/11/2013	Kiran Jewellers and sons At. Main Market, Udala, Baripada, District-Angul, Odisha	Gold and gold alloys, Jewellery/artefacts- fineness and marking-	1417			1999
11	5731973	27/11/2013	Jasmin Jewellers Plot No. 5F/718, Sector-9, CDA Ward No.CU-CW PO. Abhinab Bidanasi, PS. Markat Nagar District-Cuttack, Odisha-753014	Gold and gold alloys, Jewellery/artefacts- fineness and marking-	1417			1999
12	5732066	27/11/2013	Maa Santoshi Jewellers In front of Atalbihari High School, Basudevpur, District-Bhadrak, Odisha	Gold and gold alloys, Jewellery/artefacts- fineness and marking-	1417			1999
13	5733371	29/11/2013	New Kiran Jewellers At. /PO Udala, Dist.-Mayurbhanj, Odisha-757041	Gold and gold alloys, Jewellery/artefacts- fineness and marking-	1417			1999
14	5733876	03/12/2013	Sahu Jewellery At. Station Road PO Bhaskarganj District-Balasore, Odisha-756001	Gold and gold alloys, Jewellery/artefacts- fineness and marking- Specification	1417			1999
15	5733977	03/12/2013	Madan Mohan Jewellers Bada Bazar, Sakhigopal, Puri, Odisha-752014	Gold and gold alloys, Jewellery/artefacts- fineness and marking- Specification	1417			1999
16	5734373	03/12/2013	Jalaram PVC and Polymers (I) Pvt. Ltd. Plot No. C-32, Industrial Estate, Khurda, Odisha-7520055	Unplasticized pvc pipes for potable water supplies-Specification	4985			2000
17	5734171	04/12/2013	Jayashree Cloth Store & Jewellery Khata No. 382/222, Plot No. 340/3589, Ward No. ANG-C PO. PS.-Pallahara District-Angul, Odisha	Gold and gold alloys, Jewellery/artefacts- fineness and marking- Specification	1417			1999
18	5734474	05/12/2013	Rashmi Jewellers Old Busstand Road, Binka, Sonepur, Odisha-767019	Gold and gold alloys, Jewellery/artefacts- fineness and marking- Specification	1417			1999
19	5734575	05/12/2013	Dhanalaxmi Jewellers Badagada, Mainroad Ward No. 13 Sorada District-Ganjam, Odisha-761109	Gold and gold alloys, Jewellery/artefacts- fineness and marking- Specification	1417			1999

1	2	3	4	5	6	7	8	9
20	5734676	05/12/2013	Rabi Prusty Alankar & Workshop Plot No. 2382/2585, PO/PS-Daspalla, Dist-Nayagarh, Odisha-752084	Gold and gold alloys, Jewellery/artefacts- fineness and marking- Specification	1417			1999
21	5736074	10/12/2013	Cables (India) PVT Ltd. B/5 Industrial Estate Balasore, Odisha-756001	Aerial bunched cables for working voltages upto and including 1100 volts- Specification	14255			1995
22	5735476	11/12/2013	Nelson Industries Plot No. 949 Dolita, PO:-Rajia, District-Keonjhar, Odisha-758047	Packaged drinking water (other than packaged natural mineral water)- Specification	14543			2004
23	5735577	11/12/2013	Visa Steel Limited Kalinganagar Industrial complex Jakhapura, Jaipur Road District-Jaipur Odisha-755026	Hot rolled low, medium and high tensile structural steel-Specification	2062			2011
24	5737783	26/11/2013	Shanti Packaging & Beverages Pvt. Ltd. Batagan Biraharekrushna Pur, Puri Sadar, Puri Odisha-752002	Packaged drinking water (other than packaged natural mineral water) Specification	14543		2004	

[No. CMD/13:11]

A.K. PUROHIT, Scientist 'D'

नई दिल्ली, 7 जनवरी, 2014

कांआ 235.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उपविनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, को लाइसेंस रद्द किए गए हैं:

## अनुसूची

क्र.	लाइसेंस नं.	लाइसेंसधारी का नाम व पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
01	5468883	अमृत एक्वा इंडस्ट्रीज गोटपाटना, भुवनेश्वर, जिला-खुर्दा, ओडिशा-751003	भारतीय मानक 14543:2004 के अनुरूप पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनिरल जल के अलावा)	07/11/2013
02	5687188	श्याम मोटर्स (श्यामजी जल) बिजेपुर, पोस्ट-खैरियार, जिला-नुआपडा, ओडिशा-766107	भारतीय मानक 14543:2004 के अनुरूप पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनिरल जल के अलावा)	12/11/2013
03	5210844	सौभाग्य ट्रिंक्स प्रा लि 11, जगतपुर इंडस्ट्रियल एस्टेट, जगतपुर, जिला-कटक, ओडिशा-751021	भारतीय मानक 14543:2004 के अनुरूप पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनिरल जल के अलावा)	10/12/2013
04	5117551	कृषि रसायन मैतापुर, पोस्ट-रानीताल, जिला-बालेश्वर, ओडिशा-756111	भारतीय मानक 8960:1978 के अनुरूप मिथाइल पैराथियान डस्टिंग पाउडर	13/12/2013

[सं केन्द्रीय प्रमाणन विभाग/13:11]

अक्षय कुमार पुरोहित, वैज्ञानिक-‘डी’

New Delhi, the 7th January, 2014

**S.O. 235.**—In Pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each:

**SCHEDULE**

Sr.No.	Licence No. CM/L-	Name and Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of cancellation
01	5468883	Amrut Aqua Industries at-Gothapatna, Bhubaneswar Distt: Khurda Odisha-751003	Packaged drinking water (other than packaged natural mineral water) as per IS 14543:2004	07/11/2013
02	5687188	Shyam Motors (Shyamji Jall) at:-Bijepur PO:-Khariar, Distt: Nuapada Odisha-766107	Packaged drinking water (other than packaged natural mineral water) as per IS 14543:2004	12/11/2013
03	5210844	Saubhagya Drinks Private Limited 11, Jagatpur Industrial Estate, Jagatpur, District: Cuttack, Odisha-751021	Packaged drinking water (other than packaged natural mineral water) as per IS 14543:2004	10/12/2013
04	5117551	Krishi Rasayan at: Maitapur, PO:Ranital, District: Balasore Odisha-756111	Specification for Methyl Parathion Dusting Powders as per IS 8960:1978	13/12/2013

[No. CMD/13:11]

A.K. PUROHIT, Scientist 'D'

नई दिल्ली, 6 जनवरी, 2014

**का०आ० 236.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचना करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

**अनुसूची**

क्र. सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भारतीय मानक सं.	भाग	अनुभाग	वर्ष
1	2	3	4	5	6	7	8	9
1	3902762	01/01/2013	मैसर्स देवांगी ज्वैलर्स प्रा लि, 109/110, श्रेयस डायमंड सेंटर, मिनी हीरा बाजार, वराछा, रोड, सूरत 395006	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
2	3902863	01/01/2013	मैसर्स कोठारी ज्वैलर्स, 3/4110;44-46, शादीवाला मार्केट, दालिया शेरी, नवापुरा, सूरत	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999

1	2	3	4	5	6	7	8	9
3	3904564	02/01/2013	मैसर्स श्री पार्श्व जवैलर्स, 22, रामेश्वर काम्पलैक्स, संस्कृति स्कूल के सामने, महादेव टेकरा, वस्त्राल रोड़ अमराईवाडी, अहमदाबाद 380026	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
4	3904665	03/01/2013	मैसर्स परम ज्वैलर्स प्रा लिमिटेड, शाप नंबर 2 और 3, इसकॉन सेंटर, शिवरंजनी क्रास रोड़ अहमदाबाद 380015	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
5	3904766	03/01/2013	मैसर्स नीलकण्ठवरनी ज्वैलर्स, किशनाले, सेंटर प्वाइंट के सामने, अलकापुरी पुलिस स्टेशन लेन, आर सी दत्त रोड़, अलकापुरी, वडोदरा 390007	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
6	3904059	03/01/2013	मैसर्स आई श्री खोडियार ज्वैलर्स, 8, शुक्ल पलैटिनम, वंदे मातरम आरकडे के सामने, न्यू एम जी रोड़, गोता, अहमदाबाद	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
7	3904160	03/01/2013	मैसर्स कृष्णा ज्वैलर्स, 218 भागीरथ, नगर सोसाइटी, 1, मरुति चौक, एल एच रोड़, सूरत वराछा	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
8	3904261	03/01/2013	कल्याण ज्वैलर्स इंडिया प्रा लि, नंबर, 2211/ए, जेतलपुर रोड़, वडोदरा सकावा, वडोदरा 390007	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
9	3904463	03/01/2013	परम ज्वैलर्स प्रा लि, रुद्रास, 31 रामबाग, पुलिस स्टेशन के, सामने, मणीनगर, अहमदाबाद 380007	स्वर्ण तथा स्वर्ण धातुओं के स्वर्ण तथा स्वर्ण आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
10	3905667	03/01/2013	मैसर्स आरची इंडस्ट्रीज, 28/29 अमर इंडस्ट्रियल एसटेड, लुबी, इलैक्ट्रिकल के पास, अनिल स्टार्च रोड़, मैमको, नरोडा रोड़, अहमदाबाद 380025	सबमर्सिबल	8034	—	—	2002
11	3905970	03/01/2013	मैसर्स सहजानंद बिबनेजिस, 144, सरदार चौक, वलासन, ता तथा डि आनंद, आनंद 388326	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)	14543	—	—	2004
12	3905768	04/01/2013	मैसर्स नीरवा हेल्थ केयर, गांव प्रांतिया, एन एच नंबर 8, डि गांधीनगर 382355	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)	14543	—	—	2004
13	3905869	04/01/2013	मैसर्स परम ज्वैलर्स प्रा लि, ग्राउंड फ्लोर, शॉप नंबर 01, टाईम स्कवेयर बिल्डिंग, परीसीमा के पास, नवरंगपुरा, अहमदाबाद 380009	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
14	3906669	07/01/2013	मैसर्स कल्पेश भाई ज्वैलर्स, यू/9, आशीर्वाद काम्पलैक्स, अर्जुन काम्पलैक्स के सामने, भारत रोड़, सूरत 394210	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
15	3908774	08/01/2013	मैसर्स श्री नवकार मैटलसे लिमिटेड प्लॉट नंबर, 342, जी आई डी सी, ओढव, शैड नंबर सी/1/515 तथा 516, अहमदाबाद 382415	स्टेनलेस स्टील कुकिंग यूटैसिलस	14756	—	—	2000

1	2	3	4	5	6	7	8	9
16	3910054	08/01/2013	मैसर्स श्री गुजरात टिम्बर कार्पोरेशन, प्लॉट नंबर, 5820, रोड नंबर 6, जी आई डी सी, सचिन, सूरत 394230	बुडन फलश डोर शटर्स ( सालिड कोर टाईप	2202	1	—	1999
17	3907873	08/01/2013	मैसर्स अंबिका बिजनेस, प्लॉट नंबर 18, पानी नी टैकी के सामने, गांव चौदलोडिया, अहमदाबाद 382481	पैकेजबंद पेयजल ( अदर दैन पैकेजड नेचुरल मिनरल वाटर )	14543	—	—	2004
18	3908269	08/01/2013	मैसर्स अटोरेया पैट्रोकेम लिमिटेड, टुंडव अंजेसर रोड, गांव टुंडव, ता सावली, वडोदरा 391775	न्यू इंस्लेटिंग आयल	335	—	—	1993
19	3908370	09/01/2013	मैसर्स आदित्य इंडस्ट्रीज, ब्लाक नंबर 1820, चिखली-वंसदा रोड, हंस मैटल के सामने, अलीपुर, चिखली नवसारी बिलीमोरा 396409	बुडन फलश डोर शटर्स ( सालिड कोर टाईप )	2202	1	—	1999
20	3908471	09/01/2013	मैसर्स कामधेनु बिजनेस, सर्वे नंबर 264/पी-1, जेतपुर वडागा गांव, वडागा, ता खानपुर, पंचमहल 389230	पैकेजबंद पेयजल ( अदर दैन पैकेजड नेचुरल मिनरल वाटर )	14543	—	—	2004
21	3909069	09/01/2013	मैसर्स एस टी आई इंडस्ट्रीज, सर्वे नंबर, 60/1 तथा 2, वापी दमन रोड, कुंता गांव, बलसाद, पारडी, गुजरात 396191	पी वी सी इंस्लेटिड केबल	694	—	—	1990
22	3908875	10/01/2013	मैसर्स सामोर गोल्ड पैलेस, लक्ष्मी काम्पलैक्स, प्रगति बैंक के पास, बनसकांटा, पी ओ थारा 385555	स्वर्ण तथा स्वर्ण धातुओं के आभूषण शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
23	3909170	11/01/2013	मैसर्स कैलाश गोल्ड, 46/47, सिलीकोन शॉपर्स, सत्या नगर के सामने, उधना मेन रोड, सूरत, पी ओ उधना 394210	स्वर्ण तथा स्वर्ण धातुओं के आभूषण शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
24.	3908572	11.01.2013	मैसर्स फ्यूचर टायर्स प्रा० लिमिटेड, प्लॉट नम्बर 29 & 30, जीआईडीसी एस्टेट, पंचमहन, कलोल	ओटोमोटिव व्हीकल-न्यूमैटिक टायर फार टू एण्ड थ्री मोटर विहीकल	15627	—	—	2005
25.	3911460	13.01.2013	मैसर्स शैमको प्लास्टिक प्रा० लि०, प्लॉट नं० ए-1/906/907, जीआईडीसी, अंबरगांव, बलसाद	टैक्सटाईल्स टारपोलिन मेड फ्राम हाई डैनसिटी पालथिलीन वोवन फैब्रिक	7903	—	—	2011
26.	3909877	15.01.2013	मैसर्स रुद्र ज्वैलर्स, शॉप नं० 1290. जैन टैम्पल के पास, श्रावक स्ट्रीट, पीओओडीई, आनंद-388210	स्वर्ण तथा स्वर्ण धातुओं के आभूषण शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
27.	3909978	15.01.2013	मैसर्स एन सी ज्वैलर्स, ए 7/8, कृष्णा वैली काम्पलैक्स अमितनगर सर्कल, जय अम्बे स्कूल के सामने, सावली रोड, वडोदरा	स्वर्ण तथा स्वर्ण धातुओं के आभूषण शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
28.	3910155	16.01.2013	मैसर्स पंकज ज्वैलर्स, ए-3, 547, बस स्टैंड के पास, चौकसी बाजार, मांडवी, वडोदरा	स्वर्ण तथा स्वर्ण धातुओं के आभूषण शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
29.	3910256	16.01.2013	मैसर्स श्री ओमकार जलधारा, बी/एम/3, मारुति इंडस्ट्रियल एस्टेट, भेडवाड उधना, सूरत-394221	पैकेजबंद पेयजल ( अदर दैन पैकेजड नेचुरल मिनरल वाटर )	14543	—	—	2004

1	2	3	4	5	6	7	8	9
30.	3910458	16.01.2013	मैसर्स सोनी रमनिकलाल डामोदरदास, 10/1144, श्रीजी निवास, हवादिया चकलाख, गोपीपुरा, सूरत-395003	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
31.	3910963	16.01.2013	मैसर्स बीएच स्मिथ तथा सन्स, गणदेवी रोड, देवसर, बिलीमोरा, नवसारी-396380	बटरफ्लाई वावलस फार जनरल परपस	13095	-	-	1991
32.	3912260	16.01.2013	मैसर्स राकेश इंजिनियरिंग वर्क्स, 6/7, नवदुर्गा एस्टेट, फोर्ज तथा ब्लोवर के सामने, नरोडा रोड, अहमदाबाद-380025	सबमर्सिबल पम्पसैट्स	8034	-	-	2002
33.	3911258	21.01.2013	मैसर्स अल मनजल ज्वेलर्स, 490/154, फकीरभाई की चाल, मोनोग्राम मिल, रखीयाल, अहमदाबाद-380023	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
34.	3911359	21.01.2013	मैसर्स किशन भाई ज्वेलर्स, 1383, भावसार वाड, चौकसी बाजार, नडियाड, खेडा-391440	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
35.	3912361	24.01.2013	मैसर्स धनुका एग्रीटेक लिमिटेड डी-1, ए/डी-1 बी, अजंता इंडस्ट्रीयल एस्टेट, एट वासणा- आईवा-साणंद वीरमगाम रोड, साणंद जिला-अहमदाबाद-382170	पैस्टिसाईड-कारटेप हाईड्रोक्लोराइड एस पी	14183	-	-	1994
36.	3912462	24.01.2013	मैसर्स धनुका एग्रीटेक लिमिटेड डी-1/ए डी-1 बी, अजंता इण्डस्ट्रीयल एस्टेट, एट वासणा- आईवा-साणंद वीरमगाम रोड, साणंद जिला-अहमदाबाद-382170	पैस्टिसाईड - कारटेप हाईड्रोक्लोराइड जी	14184	-	-	1994
37.	3913363	24.01.2013	मैसर्स सिलीकोन क्रोप सायन्स (ई) प्राईवेट लिमिटेड 32, नारायण एस्टेट, सानन्द विरमगाम रोड, एट ईयावा, सानन्द जिला: अहमदाबाद-382170	प्राफेनोफोस इमलसिफाएबल कंसंट्रेट	15240	-	-	2002
38.	3913565	24.01.2013	मैसर्स देवांगी बिबरेजिस ए-151, शुभम इण्डस्ट्रीयल एस्टेट, मकाडा गाम, गुजरात जिला-सूरत-394325	पैकेजबंद पेयजल (अदर दैन पैकेज्ड नेचुरल मिनरल वाटर)	14534	-	-	2004
39.	3912058	24.01.2013	मैसर्स हाइ-टेक बोर्ड प्रांलि प्लॉट नं० 48/1, पो० सारभोन, सारभोन पुने मेन रोड, गांव बारडोली, जिला-सूरत-394601	वुड प्रोडक्ट्स - प्रीलेमिनेटिड पार्टिकल बोर्ड	12823	-	-	1990
40.	3912159	24.01.2013	मैसर्स हाइ-टेक बोर्ड प्रांलि प्लॉट नं० 48/1, पो० सारभोन, सारभोन पुने मेन रोड, गांव बारडोली, जिला-सूरत-394601	वुड पार्टिकल बोर्ड (मिडियम डेंसिटी) फार जनरल परपस	3087	-	-	2005
41.	3915468	28.01.2013	मैसर्स रजा फूड एंड बिबरजीस, रो हाउस नं० 2, अमान-ए-गुलिस्ता सोसायटी सरदार स्मृति सोसायटी के पास सरखेज रोड, अहमदाबाद-380055	पैकेजबंद पेयजल (अदर दैन पैकेज्ड नेचुरल मिनरल वाटर)	14543	-	-	2004
42.	3913868	28.01.2013	मैसर्स नारायण ज्वैलर्स 15-16, अवन्ती चेम्बर्स, एक्सप्रेस होटल के पीछे, आर०सी० दत्त रोड, अलकापुरी, जिला-वडोदरा	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999



1	2	3	4	5	6	7	8	9
43.	3916773	29.01.2013	मैसर्स विकास एण्टरप्राइज वसडा रोड, अलीपुर, पोस्ट-बमनवेल, चीखली, जिला-नवसारी-396409	53 ग्रेड आडिनरी पोर्टलैंड सिमेंट	12269	-	-	1987
44.	3915367	30.01.2013	मैसर्स मेट्रो इण्डस्ट्रीज 23, पंतरल एस्टेट, चंदन इण्डस्ट्रीज के पास, कृष्णा गोपाल एस्टेट के पीछे, मेम्को, नरोडा रोड, अहमदाबाद-380025	सबमर्सिबल पम्पसैट्स	8034	-	-	2002
45.	3916874	31.01.2013	मैसर्स यूनाईटेड सिमेंट कम्पनी, ब्लॉक नम्बर 1374, जय आठो बनसडा के सामने, एट अलीपुर, ता चिखली, नवसारी	53 ग्रेड आडिनरी पोर्टलैंड सिमेंट	12269	-	-	1987
46.	3916268	31.01.2013	मैसर्स देवांशी पावर्स लिमिटेड, प्लॉट नं० 418, 419 जीआईडीसी एस्टेट, आनंद, विट्ठल, उद्योगनगर-388121	पीवीसी इंसूलेटिड केबल	694	-	-	1990
47.	3916369	31.01.2013	मैसर्स देवांशी पावर्स लिमिटेड, प्लॉट नं० 418, 419 जीआईडीसी एस्टेट, आनंद, विट्ठल, उद्योगनगर-388121	पीवीसी इंसूलेटिड (हैवी ड्यूटी) इलैक्ट्रिक केबल	1554	1	-	1988
48.	3917068	31.01.2013	मैसर्स भारत एंटरप्राइस, प्लॉट नं० बी/2/6, सचिन उद्योग नगर, वंज सचिन, सूरत-394230	प्लाईवुड फार जनरल परपस	303	-	-	1989

[सं. सीएमडी/13:11]

डॉ. एस. एल. पालकर, वैज्ञानिक 'एफ' तथा प्रमुख

New Delhi, the 6th January, 2014

**S.O. 236.**—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule:

**SCHEDULE**

Sl. No.	Licences No.	Grant Date	Name & Address of the Party	Title of the Standard	IS No.	Part	Section	Year
1	2	3	4	5	6	7	8	9
1	3902762	01/01/2013	M/s Devangi Jewellers Pvt Ltd 109/110, Shreyas Diamond Centre Mini Hira Bazar, Varachha Road, Surat 395006	Gold and gold alloys, jewellery/artefacts - fineness and marking -	1417	-	-	1999
2	3902863	01/01/2013	M/s Kothari Jewellers 3/4110; 44-46, Shaddiwala Market Daliya Sheri, Navapuria Surat Bhagal	Gold and gold alloys, jewellery/artefacts - fineness and marking -	1417	-	-	1999
3	3904564	02/01/2013	M/s Shree Parshwa Jewellers 22, Rameshwar Complex, Opp Sanskruti School, Mahadev Tekra, Vastral Road, Amraiwadi 380026	Gold and gold alloys, jewellery/artefacts - fineness and marking -	1417	-	-	1999

1	2	3	4	5	6	7	8	9
4	3904665	03/01/2013	M/s Param Jewels Private Ltd. Shop No 2 & 3, Iscon Centre Shivranjani Cross Road, Ahmedabad-380015	Gold and gold alloys, jewellery/artefacts fineness and marking -	1417	-	-	1999
5	3904766	03/01/2013	M/s Neelkanthvarni Jewellers Kishnalay, Opp Centre Point, Alkapuri Police Station Lane, R.C. Dutt Road, Alkapuri, Vadodara-390007	Gold and gold alloys, jewellery/artefacts - fineness and marking -	1417	-	-	1999
6	3904059	03/01/2013	M/s AAI Shree Khodiyar Jewellers 8, Shukan Platinum, Opp. Vande Mataram Arcade, New S G Road, Gota, Ahmedabad	Gold and gold alloys, jewellery/artefacts - fineness and marking -	1417	-	-	1999
7	3904160	03/01/2013	M/s Krishna Jewellers 218, Bhagirath Nagar Soc-1 Maruti Chowk, L H Road, Surat, Varachha	Gold and gold alloys, jewellery/artefacts - fineness and marking -	1417	-	-	1999
8	3904261	03/01/2013	M/s Kalyan Jewellers India Pvt Ltd No. 2211/A, Jetalpur Road Vadodara Sakaba-390007	Gold and gold alloys, jewellery/artefacts - fineness and marking -	1417	-	-	1999
9	3904463	03/01/2013	M/s Param Jewels Pvt Ltd Rudraksh, 31, Rambaug, Opp Police Station, Maninagar, Ahmedabad-380007	Gold and gold alloys, jewellery/artefacts - fineness and marking -	1417	-	-	1999
10	3905667	03/01/2013	M/s Aarchi Industries 28/29 Amar Ind. Estate, Nr. Lubi Electrical, Anil Startch Road, Memco, Naroda Road, Ahmedabad-380025	Submersible pumpsets	8034	-	-	2002
11	3905970	03/01/2013	M/s Sahjanand Beverages 144, Sardar Chowk Valasan, Tal & Dist Anand-388326	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
12	3905768	04/01/2013	M/s Neerwa Health Care, Village Prantiya, NH No. 8, Dist: Gandhinagar, Prantiya-382355	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
13	3905869	04/01/2013	M/s Param Jewels Pvt Ltd Ground Floor, Shop No. 01, Times Square Building, Near Parisima Ahmedabad, Navrangpura-380009	Gold and gold alloys, jewellery/artefacts - fineness and marking	1417 1417	- -	- -	1999 1999
14	3906669	07/01/2013	M/s Kalpeshbhai Jewellers U/9, Ashirwad Complex, Opp. Arjun Complex, Surat, Bhatar Road-394210	Gold and gold alloys, jewellery/artefacts - fineness and marking -	1417	-	-	1999
15	3908774	08/01/2013	M/s Shri Navkar Metals Limited Plot No. 342, GIDC, Odhav, Shed No. C/1/515 & 516, Ahmedabad-382415	Stainless steel cooking utensils -	14756	-	-	2000
16	3910054	08/01/2013	M/s Shree Gujarat Timber Corporation Plot No. 5820, Road No. 6, GIDC, Sachin, Surat-394230	Wooden flush door shutter (Solid Core Type)	2202	1	-	1999
17	3907873	08/01/2013	M/s Ambica Beverages Plot No. 18, Opp. Pani-ni-Tanki Village: Chandlodia Ahmedabad-382481	Packaged drinking water (other than packaged)	14543	-	-	2004

1	2	3	4	5	6	7	8	9
18	3908269	08/01/2013	M/sAtreya Petrochem Ltd Tundav Anjesar Road, Village Tundav, Taluka Savli, Baroda-391775	New insulating oils	335	-	-	1993
19	3908370	09/01/2013	M/s Aditya Industries Block No. 1820, Chikhli-Vansda Road, Opp. Hans Metal, Alipore, Chikhli, Navsari, Bilimora-396409	Wooden flush door shutters (solid core type):	2202	1	-	1999
20	3908471	09/01/2013	M/s Kamdhenu Beverages Survey No. 264/P-1, Jetpur, Vadaga Village Vadgam, Taluka Khanpur, Panchamahar-389230	Packaged drinking water (other than packaged)	14543	-	-	2004
21	3909069	09/01/20013	M/s STI Industries Survey No. 60/1 & 2, Vapi, Daman Road, Kunta Village, Valsad, Pardi-396191	Pvc insulated cables	694	-	-	1990
22	3908875	10/01/2013	M/s Samor Gold Palace 2/3/4 Laxmi Complex, Near Pragati Bank Banas Kantha, P.O. Thara-385555	Gold and gold alloys, jewellery/artefacts - fineness and marking -	1417	-	-	1999
23	3909170	11/01/2013	M/s Kalash Gold 46/47, Silicon Shoppers, Opp. Satya Nagar, Udhna Main Road, Surat P.O. Udhna-394210	Gold and gold alloys, jewellery/artefacts - fineness and marking -	1417	-	-	1999
24	3908572	11/01/2013	M/s Future Tyres Private Ltd. Plot No. 29 & 30, GIDC Estate Panchamahar, Kalol	Automotive vehicles - pneumatic tyres for two and three-wheeled motor vehicles -	15627	-	-	2005
25	3911460	13/01/2013	M/s Shamco Plastics Pvt. Ltd. Plot No. A-1/906/907, GIDC, Umbergaon, Dist: Valsad	Textiles-tarpaulins made from high density polyethylene woven fabric	7903	-	-	2011
26.	3909877	15/01/2013	M/s Rudhra Jewellers Shop No. 1290, Near Jain Temple Shravak Street, Anand, P.O. ODE-388210	Gold and gold alloys, jewellery/artefacts- fineness and marking	1417	-	-	1999
27.	3909978	15/01/2013	M/s N C Jewels A, 7/8 Krishna Valley Complex Amitnagar Circle, Opp. Jay Ambe School Savli Road, Vadodara	Gold and gold alloys, jewellery/artefacts- fineness and marking-	1417	-	-	1999
28.	3910155	16/01/2013	M/s Pankaj Jewellers A-3, 547, Near Bus Stand Choksi Bazar, Vadodara, Mandvi	Gold and gold alloys, jewellery/artefacts- fineness and marking-	1417	-	-	1999
29.	3910256	16/01/2013	Shree Omkar Jaldhara B/M/3, Maruti Industrial Estate, Bhedwad Udhna, at Vill. Surat-394221	Packaged drinking water (other than packaged)	14543	-	-	2004
30.	3910458	16/01/2013	M/s Soni Ramniklal Damodardas 10/144, Shreeji Nivas, Havadiya Cakla, Gopipura, Surat-395003	Gold and gold alloys, jewellery/artefacts- fineness and marking	1417	-	-	1999
31.	3910963	16/01/2013	M/s B.H. Smith & Sons Gandevi Road, Devsar, Bilimora Navsari-396380	Butterfly valves for general purposes	13095	-	-	1991
32.	3912260	16/01/2013	M/s Rakesh Engineering Works 6/7, Navdurga Estate, Opp. Forge & Blower Ahmadabad, Naroda Road-380025	Submersible pumpsets	8034	-	-	2002

1	2	3	4	5	6	7	8	9
33.	3911258	21/01/2013	M/s AL Manjal Jewellers 490/154, Fakirbhais Chawle, Monogram Mills, Rakhial, Ahmadabad-380023	Gold and gold alloys, jewellery/artefacts-fineness and marking	1417	-	-	1999
34.	3911359	21/01/2013	M/s Kishanbhai Jewellers 1383, Bhavsarvard, Choksi Bazar Nadiad, Kheda-387001	Gold and gold alloys, jewellery/artefacts- fineness and marking-	1417	-	-	1999
35.	3912361	24/01/2013	M/s Dhanuka Agritech Limited D-1 A/D-1B, Ajanta Industrial Estate, at Vasna-Iyava, Sanad Viramgam Road, Sanand, Ahmedabad-382170	Pesticide-cartap hydrochloride sp	14183	-	-	1994
36.	3912462	24/01/2013	M/s Dhanuka Agritech Limited D-1 A/D-1B Ajanta Industrial Estate, At. Vasna-Iyava, Sanad Viramgam Road, Sanand, Amedabad-382170	Pesticide-cartap hydrochloridge g	14184	-	-	1994
37.	3913363	24/01/2013	M/s Silicon Crop Science Pvt Ltd 32, Narayan Estate, Sanand- Viramgam Road, At:Iyava, Ahmedabad, Sanand-382170	Profenofos emulsifiable concentrate-	15240	-	-	2002
38.	3913565	24/01/2013	M/s Devangi Beverages A-151 Shubham Industrial Estate Surat, At: Makada Gam-394325	Packaged drinking water (other than packaged natural mineral water	14543	-	-	2004
39.	3912058	24/01/2013	M/s HI-TECH Board Pvt Ltd Plot No. 48/1, At post Ninat, Post Sarbhon, Sarbhon-Puni Mainroad, Village Bardoli, Surat-394601	Wood products- prelaminated particle boards	12823	-	-	1990
40.	3912159	24/01/2013	M/s HI-TECH Board Pvt Ltd Plot No. 48/1, At post Ninat, Post Sarbhon, Sarbhon-Puni Main road, Village Bardoli, Surat-394601	Wood particle products- (medium density) for general purposes	3087	-	-	2005
41.	3915468	28/01/2013	M/s Raza Food and Beverages Row ouse No. 2, Aman-E-Gulista Society Nr. Sardar Smurty Society, Sarkhej Road. Ahmadabad-380055	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
42.	3913868	28/01/2013	M/s Narayan Jewellers 15-16 Avanti Chambers, B/H, Express Hotel, R C Dutt Road, Alkapuri Vadodara	Gold and gold alloys, jewellery/ artefacts-fineness and marking	1417	-	-	1999
43.	3916773	29/01/2013	M/s Vikas Enterprises Vansda Road, Alipura, Post Bamnvel, Navsari, Chikhli-396409	53 grade ordinary portland cement	12269	-	-	1987
44.	3915367	30/01/2013	M/s Metro Industries 23, Pancharatna Estate, NR. Chandan Industries, B/H Krishna Gopal Estate, Memco, Naroda Road, Ahmadabad-380025	Submersible pumpsets	8034	-	-	2002
45.	3916874	31/01/2013	M/s United Cement Company Block No. 1374, Opp, Jay Auto-Vansda, At Alipre, Tal:Chikhly, Dist: Navsari,	53 grade ordinary portland cement	12269	-	-	1987

1	2	3	4	5	6	7	8	9
46.	3916268	31/01/2013	M/s Devanshi Power Limited Plot No. 418,, 419 GIDC Estate Vithal Udyognagar, Anand-388121	PVC insulated cables	694	-	-	1990
47.	3916369	31/01 /2013	Devanshi Power Limited Plot No. 418, 419 GIDC Estate Vithal Udyognagar Anand-388121	PVC inslated (heavy duty) electric cables	1554	1	-	1988
48.	3917068	31/01/2013	Bharat Enterpirse Plot No/ B/2/6, Sachin Udhyog Nagar, Vanz Sachin, Surat-394230	Plywood for general purposes	303	-	-	1989

[No. CMD/13:11]

Dr. S. L. PALKAR, Scientist 'F' &amp; Head

नई दिल्ली, 6 जनवरी, 2014

का०आ० 237.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 5 के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है:-

## अनुसूची

क्र. सं.	लाइसेंस सं. सीएम/एल	लाइसेंसधारी का नाम व पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
1	3716260	मैसर्स सनराईस एंटरप्राईस, 5-बी, सरस्वती इंडस्ट्रियल एस्टेट डांडी रोड, सुभाषचंद्र गार्डन के सामने, मोरा भागल, सूरत-395005	पैकेजबंद पेयजल ( अदर दैन पैकेजड नेचुरल मिनरल वाटर) आईएस 14543:2004	03/01/2013
2.	7537280	मैसर्स कुमार एंटरप्राईस, प्लॉट नंबर 1, ब्लाक नंबर 758, अतुल वलसाद रोड, पामेरा, डि वलसाद -396001	पैकेजबंद पेयजल ( अदर दैन पैकेजड नेचुरल मिनरल वाटर) आई एस 14543:2004	04/01/2013
3.	7834387	मैसर्स सामोर एंटरप्राईस, आर एस नंबर 430/1 2 और 431, थारा, बनसकांटा	पैकेजबंद पेयजल ( अदर दैन पैकेजड नेचुरल मिनरल वाटर) आई एस 14543-2004	04/01/2013
4.	7892304	मैसर्स नीमा स्वीचगीयर, सी-1/2609, तीसरी फेस, जी आई डी सी, वापी, वलसाद-396195	फलेमप्रुफ एनक्लोसर्स फार इलैक्ट्रिकल एपरेट्स आई एस 2148-2004	04/01/2013
5.	3713557	मैसर्स फोरएवर प्रीसीयस ज्वेलर्स एन्ड डायमंड लिमिटेड, सुरत सेंट्रल, ग्राउंड फ्लोर, आरीश मोल, वेलेनटाईन मल्टीप्लेक्ष के सामने, सूरत डुमस रोड, गौरवपथ-395007	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999	21/01/2013

[सं सीएमडी/13:13]

डॉ० एस.एल. पालकर, वैज्ञानिक 'एफ' तथा प्रमुख

New Delhi, the 6th January, 2014

**S.O. 237.**—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled with effect from the date indicated against each:

**SCHEDULE**

Sr.No.	Licences No. CM/L-	Name and Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of cancellation
1.	3716260	M/s Sunrise Enterprise 5-B, Saraswati Industrial Estate, Dandi Road, Opp. Shubhas Chandra Garden, Mora Bhagal, Distt: Surat-395005	Packaged drinking water (other than packaged natural mineral water) IS 14543:2004	03/01/2013
2.	7537280	M/s Kumar Enterprise Plot No. 1, Block No. 758, Atul-Valsad Road, Parnera, Disst. Valsad-396001	Packaged drinking water (other than packaged natural mineral water) IS 14543:2004	04/01/2013
3.	7834387	M/s Samor Enterprise R S No. 430/1 2 & 431, Thara Distt: Banaskantha	Packaged drinking water (other than packaged natural mineral water) IS 14543:2004	04/01/2013
4.	7892304	M/s Nema Switch Gear C-1/2609, Third Phase, G.I.D.C., Vapi Distt: Valsad-396195	Flameproof enclosures for electrical Apparatus IS 2148:2004	04/01/2013
5.	3713557	M/s Forever Previous Jewellery & Diamond Ltd. Surat Central, Ground Floor, Iris, Mall Opp. Valentine Multiplex, Surat Dumas Road, Gourav Path, Distt: Surat-395007	Gold and Gold Alloys Jewellery/Artefact Fineness and Marking IS 1417:1999	21/01/2013

[No. CMD/13:13]

Dr. S. L. PALKAR, Scientist 'F' &amp; HEAD

नई दिल्ली, 6 जनवरी, 2014

**का०आ० 238.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

**अनुसूची**

क्र. सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भारतीय मानक सं.	भाग	अनुभाग	वर्ष
1	2	3	4	5	6	7	8	9
1.	3916975	01.02.2013	सरस प्लाईवुड प्रोडक्ट्स प्रा० लि० प्लॉट नं० 744, न्यू जीआईडीसी गुंडलाव, वलसाड-396001	बुडन फलश डोर शटर्स (सालिड कोर टाईप)	2202	1	-	1999
2.	3915872	01.02.2013	अरहाम पम्पस बी-10, बी-12, बी 28, बी 29, जगन्नाथ इन्डस्ट्रीयल एस्टेट, गुजरात बोटलिंग के पास, रखियाल अहमदाबाद	ओपनवैल सबमर्सिबल पम्पसैट	14220	-	-	1994

1	2	3	4	5	6	7	8	9
3.	3916167	04.02.2013	शिव गंगा बिबरजीस, प्लॉट नं० सी 5-6, उमिया नगर इण्डो- सोसायटी महेन्द्रा शो रूम के पीछे, जोगनी माता मंदिर के पास यूएम रोड, सूरत- 395007	पैकेजबंद पेयजल ( अदर दैन पैकेज्ड नेचुरल मिनरल वाटर)	14543	-	-	2004
4.	3917169	04.02.2013	दीपक इन्डस्ट्रीज 12/3, श्रमजीवी वसाहत एस्टेट, राजेन्द्र पार्क, चार रास्ता के पास, वनराज सोप फैक्ट्री के पीछे, रखियाल, अहमदाबाद-380023	ओपनवैल सबमर्सिबल पम्पसेट	14220	-	-	1994
5.	3918070	04.02.2013	देवांशी पावर लिमिटेड प्लॉट नं० 418, 419, आईडीसी एस्टेट, विट्ठल उद्योगनगर, आणंद, जिला आणंद-388121	क्रासलिंगड पालथिलिन इंसुलेटिड पी वी सी शीथड केबल	7098	1	-	1988
6.	3918474	04.02.2013	शुभलक्ष्मी कास्टिंग प्रा० लि० 20-21, मौरैया इन्डस्ट्रीयल एस्टेट, सर्वोदय होटल के पास, ता० अहमदाबाद	कार्बन स्टील कास्ट बिलेट इनगोट्स, बिलेट्स, ब्लूमस तथा स्लेब्स फार रिलोडिंग इंटू स्टील फार जनरल स्टकचर्ल परपस	2830	-	-	2012
7.	3917876	07.02.2013	रोसिएट ज्वैल्स प्रा० लि० 6/1347, मातु छाया बिल्डिंग, पहली मंजिल, जाडा खाड, महिधरपुरा, जिला-सूरत-395003	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
8.	3919476	07.02.2013	सन एन्टरप्राइज सर्वे नं० 87-88, देवाघ, गोडघरा रोड, जिला-सूरत	प्लाईवुड फार जनरल परपस	303	-	-	1989
9.	3919577	08.02.2013	श्री वैश्वदेवी मेटल वर्क्स सी/1/बी-96, जीआईडीसी, वाघोडिया, वडोदरा-391760	डोमैस्टिक प्रेशर कुकर	2347	-	-	2006
10.	3920360	11.02.2013	बजरंग कास्टिंग प्रा० लि० 144, गांव इयावा, हिपोलीन के पास, ता० साणंद, जिला- अहमदाबाद-382110	कार्बन स्टील कास्ट बिलेट इनगोट्स, बिलेट्स, ब्लूमस तथा स्लेब्स फार रिलोडिंग इंटू स्टील फार जनरल स्टकचर्ल परपस	2830	-	-	2012
11.	3918171	11.02.2013	सत्यम प्लाई इन्डस्ट्रीज उंजा सिद्धपुर हाईवे, प्रीत रेस्टोरेन्ट के पास, ब्रह्मवाडा, जिला-मेहसाणा-384215	वुडन फ्लश डोर शटर्स ( सालिड कोर टाईप)	2202	1	-	1999
12.	3919375	11.02.2013	रोयल टच लेमीनेट्स प्रा० लि० ब्लाक नं० 27-32, राधे इन्डस्ट्रीयल एस्टेट, ताजपुर रोड, चांगोदर, जिला-अहमदाबाद-382213	पालिविनायल एसीटेड डिसपरशन बेसड एडहैसिवस फार वुड	4835	-	-	1979
13.	3921261	14.02.2013	टोरा ज्वेलर्स ए-602, डाइमण्ड वर्ल्ड, मिनी बाजार, वराछा रोड, जिला-सूरत-395006	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
14.	3921362	18.02.2013	के आर ज्वैल्स 3/644, चोक्सी बाजार, नवापुरा, कारवा रोड, भागल जिला: सूरत-395003	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
15.	3921463	18.02.2013	इनस्टाईल ज्वेलर्स 5767, फर्स्ट फ्लोर, भवानी जेम्स, गोदानी सर्कल के पास, बम्बावाडी, कतारगाम जिला-सूरत	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999

1	2	3	4	5	6	7	8	9
16.	3921665	18.02.2013	जे जे ज्वेलर्स यू-6, आहीरवाड कॉम्प्लेक्स, ऊमाभवन सर्कल के पास, भतार रोड जिला-सूरत	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
17.	3921766	18.02.2013	डिफाईन ज्वेलर्स जी-20, 21, ओपेरा हाउस, सुपर डायमण्ड मार्केट के पीछे, मिनी बाजार, वराछा रोड, जिला-सूरत	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	—	—	1999
18.	3922263	22.02.2013	फिनोलेक्स इन्डस्ट्रीज लि० (मासर पाईप डिविजन) ब्लाक नं० 1184, 1185, 1186, 1199/पी-1, 1201, 1202, 1203, 1205, 1211 मासर गांव रोड, मानसर, पादरा, जिला-वडोदरा-391421	यूपीवीसी पाईपस फार सायस तथा वेस्ट डिस्चार्ज सिस्टम इंसाईड बिल्डिंग इनक्लूडिंग वेंटिलेशन तथा रेनवाटर सिस्टम	13592	—	—	1992
19.	3922364	22.02.2013	फिनोलेक्स इन्डस्ट्रीयल लि० (मासर पाईप डिविजन) ब्लाक नं० 1184, 1185, 1186, 1199/पी-1, 1201, 1202, 1203, 1205, 1211, मासर गांव रोड, मानसर, पादरा, जिला-वडोदरा-391421	अनप्लास्टिडाइड पीवीसी पाईप फार पोटेबल वाटर सप्लायस	4985	—	—	2000
20.	3924772	27.02.2013	अलकोक सीमेंट पाईप्स एण्ड कांक्रीट वर्क्स न्यू कोटन मिल नं० 2 के पास, अजोड डेरी के पास, पानी टंकी के सामने, आसिमा डेनिम की लाईन में, रखियाल चार रास्ता, रखियाल, जिला-अहमदाबाद	प्रीकास्ट कांक्रीट मेनहोल कवर तथा फ्रेम	12592	—	—	2002

[सं० सीएमडी/13:11]

डॉ० एस. एल. पालकर, वैज्ञानिक 'एफ' तथा प्रमुख

New Delhi, the 6th January, 2014

**S.O. 238.**—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule:

**SCHEDULE**

Sl. No.	Licence No.	GOL Date	Name of the Firm	Product	IS No.	Part	Section	Year
1	2	3	4	5	6	7	8	9
1.	3916975	01/02/2013	Saras Plywood Product Pvt. Ltd. Plot No. 744, New GIDC, Gundlav, Valsad-396035	Wooden flush door shutters (solid core type):	2202	1	—	1999
2.	3915872	01/02/2013	Arham Pumps B-10, B-12, B-28, B-29, Jagannath Industrial Estate, Near Gujarat Bottling, Rakhial Ahmedabad	Openwell submersible pumpsets	14220	—	—	1994
3.	3916167	04/02/2013	Shiv Ganga Beverages Plot No. C-5-6 Umiya Nagar Ind. SOC, Behind Mahendra Show room near Jogani Mata Mandir, Surat, U M Road-395007	Packaged drinking water (other than packaged natural mineral water)	14543	—	—	2004



1	2	3	4	5	6	7	8	9
4.	3917169	04/02/2013	Deepak Industries 12/3, Shramjivi Vasahat Estate, Near Rajendra Park Char Rasta, B/H Vanaraj Soap Factory Rakhial Ahmedabad-380023	Openwell submersible pumpsets	14220	—	—	1994
5.	3918070	04/02/2013	Devansi Power Limited Plot No. 418, 419, GIDC Estate, Vithal Udyog Nagar Anand-388121	Crosslinked polyethylene insulated pvc sheathed cables	7098	1	—	1988
6.	3918474	04/02/2013	Shubhlaxmi Casting Pvt. Ltd 20-21, Moraiya Industrial Estate, near Sarvoday Hotel, Dist. Ahmedabd Moraiya	Carbon steel cast billet ignots, billets, blooms and slabs for re-rolling into steel for general structural puposes	2830	—	—	2012
7.	3917876	07/02/2013	Roseate Jewels Private Limited 6/1347, Matru Chhaya Building, 1st Floor, Jada Khadi, Surat Mahidharpura-395003	Gold and gold alloys, jewellery/artefacts- fineness and marking	1417	—	—	1999
8.	3919476	07/02/2013	Sun Enterprise S.No. 87 & 88 Devadh, Godadara Road, Surat	Ploywood for general purposes	303	—	—	1989
9.	3919577	08/02/2013	Shree Vaishnow Devi Metal Works C/1/B-96, G.I.D.C. Waghodia, Vadodara-391760	Domestic pressure cookers	2347	—	—	2006
10.	3920360	11/02/2013	Bajrang Castings Pvt. Ltd. 144, Village Iyava, Near Hoppolin, TA Sanand Ahmedabad, Iyava-382110	Carbon steel cast billet ingots, billets, blooms and slabs for re-rolling into steel for general structural purposes	2830	—	—	2012
11.	3918171	11/02/2013	Satyam Ply Industries Unjha Siddhpur Highway, Near Preet Resturant Mahesana, Brahmanwada-384215	Wooden flush door shutters (solid core type):	2202	1	—	1999
12.	3919375	11/02/2013	Royal Touch Laminates Pvt. Ltd. Block No. 27—32, Radhe Industrial Estate, Tajpur Road, Changodar. Ahmedabad-382213	Ployvinyl acetate dispersion based adhesives for wood	4835	—	—	1979
13.	3921261	14/02/2013	Torra Jewels A-602, Diamond World Mini Bazar Suraj, Varachha Road-395006	Gold and gold alloys, jewellery/artefacts- fineness and marking	1417	—	—	1999
14.	3921362	18/02/2013	K.R. Jewellers 3/644, Choksi Bazar Navapura, Karwa Road Surat, Bhagal-395003	Gold and gold alloys, jewellery/artefacts- fineness and marking	1417	—	—	1999
15.	3921463	18/02/2013	Instyle Jewellery 5767, Ist Floor, Bhavani Gems, Near Godhani Circle Bambawadi, Surat Katargam Road	Gold and gold alloys, jewellery/artefacts- fineness and marking	1417	—	—	1999
16.	3921665	18/02/2013	J.J. Jewellers U-6, Ahirward Complex Near Umabhavan Circle, Surat, Bhatar Road	Gold and gold alloys, jewellery/artefacts- fineness and marking	1417	—	—	1999

1	2	3	4	5	6	7	8	9
17.	3921766	18/02/2013	Define Jewellery G-20, 21, Opera House Behind Super Diamond Market, Mini Bazar Surat, Varachha Road	Gold and gold alloys, jewellery/artefacts- fineness and marking	1416	—	—	1999
18.	3922263	22/02/2013	Finolex Industries Ltd. (Masar Pipe Division) Block No. 1184, 1185, 1186, 1199/p. 1, 1201, 1202, 1203, 1205, 1208 & 1211, Masar Village Road, Mansar, Padra, Vadodara-391421	Upvc pipes for soil and waste discharge systems inside buildings including ventilation and rainwater system	13592	—	—	1992
19.	3922364	22/02/2013	Finolex Industries Ltd. (Masar Pipe Division) Block No. 1184, 1185, 1186, 1199/p.1, 1201, 1202, 1203, 1205, 1208 & 1211, Masar Village Road, Mansar, Padra, Vadodara-391421	Unplasticized pvc pipes for potable water supplies	4985	—	—	2000
20.	3924772	27/02/2013	Alcock Cement Pipes & Concrete Works Near New Cotton Mill No. 2, Near, Ajod Dairy Opp. Water Tank, in the lane of Ashima Denim, Rakhial Char Rasta, Rakhial, Ahmedabad	Precast concrete manhole cover and frame	12592	—	—	2002

[No. CMD/13:11]

Dr. S.L. PALKAR, Scientist 'F' &amp; Head

नई दिल्ली, 6 जनवरी, 2014

का०आ० 239.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

## अनुसूची

क्र. सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भारतीय मानक सं.	भाग	अनुभाग	वर्ष
1	2	3	4	5	6	7	8	9
1.	3924873	04/03/2013	शाश्वत एक्वा, नं० 239, ब्लॉक 332, सर्वे नं० 445/बी, आशाराम बापू आश्रम के पास, प्रयोसा हाईट के सामने, बिल रोड, वडौदरा-391410	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
2.	3924974	04/03/2013	केमेट वेटस एन्ड फ्लोज प्रा०लि०, प्लॉट नंबर 129/सी/2, जी आई डी सी एस्टेट, अंकलेश्वर-393 002	अल्फासायपरमैथरीन डब्ल्यू पी	15603	-	-	2005
3.	3925067	04/03/2013	गंगा ज्वेलर्स, प्लॉट नं०-200, डिस्ट्रिक्ट शोपिंग सेन्टर, सेक्टर-21, गांधीनगर-382021	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
4.	3926675	04/03/2013	मैसर्स रोयल टच ऐल्युमिनियम प्रा०लि०, प्लॉट नं० 30-31 साकेत इन्डस्ट्रीयल ऐस्टेट, नोवा पेट्रोकेमिकल्स के पास, सरखेज बावला हाइवे, मोरया गाम, सानंद, अहमदाबाद-382213	एल्यूमिनियम एलाय ट्यूब फार इरीगेशन परपस	7092	2	-	1987

1	2	3	4	5	6	7	8	9
5.	3925572	05/03/2013	ए पी ज्वेलर्स, 796/1, गुजर पोल के सामने, नवा बाजार, प्रांतिज जिला : साबरकांठा-383205	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
6.	3925976	05/03/2013	मैसर्स एस्सार स्टील लिमिटेड, 27 कि॰मी॰, सूरत-हजिरा रोड, हजिरा, जिला : सूरत	स्टील प्लेट्स फार प्रेशर वैसल यूसुड एट मोडरेट तथा लो टैम्परेचर	2041	-	-	1995
7.	3926776	06/03/2013	पूजा इन्डस्ट्रीज, ब्लॉक नं॰ 1603/1, 1603/5, वांसदा रोड, अलीपोर, तालुका-चीखली, जिला : नवसारी	53 ग्रेड आडिनरी पोर्टलैंड सिमेंट	12269	-	-	1987
8.	3927374	06/03/2013	लक्ष्मी पाईप इन्डस्ट्रीज, सर्वे नं॰ 1597/34/9, वीसनगर-गांधीनगर हाईवे, गोजारीया, जिला : मेहसाना-382825	प्रीकास्ट कांक्रिट पाईप ( विद तथा विदाउट रिनफोर्समेंट)	458	-	-	2003
9.	3927071	08/03/2013	मैसर्स रेनबो स्क्रीन इंस, बी लूबी इंडस्ट्रियल पार्क, वडसर खतराज रोड, ता कलोल डिस्ट्रिक्ट गांधीनगर-382721	वैल स्क्रीनस तथा सलोटीड पाईप्स	8110	-	-	2000
10.	3932771	18/03/2013	मैसर्स अर्जुन एलायस, 21-22, पंचरत्ना इंडस्ट्रियल एस्टेट, लक्ष्मीनारायण पेट्रोल पम्प के पास, सरखेज बावला हाईवे, चांगोदर, अहमदाबाद-382213	कार्बन स्टील कास्ट बिलेट इनगोट्स, बिलेट्स, ब्लूमस तथा स्लेब्स फार रिलोडिंग इंटू स्टील फार जनरल स्टकचर्ल परपस	2830	-	-	2012
11.	3932973	18/03/2013	मैसर्स के॰पी॰एस॰ इन्डस्ट्रीज 52, 53, 54, मोना एस्टेट, अनिल स्टार्च मिल के सामने, अनिल मिल रोड, नरोडा रोड, अहमदाबाद-380025	सबमर्सिबल पम्पसैट	8034	-	-	2002
12.	3933672	20/03/2013	मैसर्स परफेक्ट प्लाई इन्डस्ट्रीज प्रा॰ लि॰, तारापुर खेडा रोड, गांव परियेज, ता॰ मातर, जिला : खोडा-388180	मैरिन प्लाईवुड	710	-	-	2010
13.	3933773	22/03/2013	मैसर्स नागअर्जुन फर्टिलाइजर एंड केमिकल लिमिटेड, प्लॉट नंबर 2505, 2506, जी आई डी सी, हलोल, डिस्ट्रिक्ट: पंचमहल-389350	ईरीगेशन इक्वूपमेंट- स्परीकलर पाईप	14151	2	-	2008
14.	3933470	22/03/2013	मैसर्स गनैबो इंडिया प्रो॰ लि॰, प्लाट नंबर, 1302-1306, जी आई डी सी इंडस्ट्रियल एस्टेट, चंपानेर रोड, हलोल, जिला : पंचमहल-389350	हायर केपेसिटी ड्राई पाउडर फॉयर एक्सटिंगविशर ( ट्राली मार्डेटिड)	10658	-	-	1999
15.	3934270	25/03/2013	एमपावर एक्वा टेक प्रा॰ लि॰, प्लॉट नं॰ 8, अंजली इंडस्ट्रियल एस्टेट विभाग-1, रेलवे लाईन के पास, अमरोली-सायन रोड, एट पोस्ट गोथान, तालुका : आलपाड, जिला : सूरत-395004	पैकेजबंद पेयजल ( अदर दैन पैकेजड नेचुरल मिनरल वाटर )	14543	-	-	2004
16.	3935272	25/03/2013	सारथी एग्रो केम, 1306/5, फेज 4, जी आई डी सी, नरोडा, अहमदाबाद - 382330	नीम बेस्ड ई सी कंटैनिंग अजाडिरेक्टिन	14300	-	-	1995
17.	3936072	25/03/2013	श्री अम्बिका बोर्ड इन्डस्ट्रीज, ब्लॉक नं॰ 61, उजडिया रोड, गांव-महीयाल, तालुका-तलोद, जिला : साबरकांठा-383215	वीनर्ड डैकोरेटिव प्लाईवुड	1328	-	-	1996

[सं सीएमडी/13:11]

डॉ॰ एस॰एल॰ पालकर, वैज्ञानिक 'एफ' तथा प्रमुख

New Delhi, the 6th January, 2014

**S.O. 239.**—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule:

**SCHEDULE**

Sl. No.	Licence No.	Grant Date	Name & Address of the Party	Title of the Standard	IS No.	Part	Section	Year
1	2	3	4	5	6	7	8	9
1	3924873	04/03/2013	Shashwat Aqua No. 239, Block No. 332, Survey No. 445/B Near Asharam Bapu Ashram, Opp. Prayosha Height, Bill Road Vadodara-391410	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
2	3924974	04/03/2013	Chemet Wets & Flows Pvt.Ltd. Plot No. 129/C/2, GIDC Estate, Bharuch Ankleshwar-393002	Alphacypermethrin, wp	15603	-	-	2005
3	3925067	04/03/2013	Ganga Jewellers Plot No. 200, District Shopping Centre, Sector-21, Gandhinagar-382021	Gold and gold alloys, jewellery/artefacts- fineness and marking	1417	-	-	1999
4	3926675	04/03/2013	Royal Touch Aluminium Pvt. Ltd. Plot No. 30-31, Saket Industrial Estate, Near Nova Petrochemicals, Sarkhej Bavla Highway, Moraiya Gam, Ahmedabad-382213	Aluminium alloy tube for irrigation purpose	7092	2	-	1987
5	3925572	05/03/2013	A P Jewellers 796/1, Opp Gujjars Pole, Nawa Bazar, Prantij Sabarkantha Gujarat-383205	Gold and gold alloys, jewellery/artefacts- fineness and marking	1417	-	-	1999
6	3925976	05/03/2013	Essar Steel India Limited 27Km, Surat-Hazira Road Surat, P.O. Hazira-394270	Steel plates for pressure vessels used at moderate and low temperature	2041	-	-	1995
7	3926776	06/03/2013	Pooja Industries Block No. 1603/5, Vandsa Road, At: Alipore, TA: Chikhli, Navsari	53 grade ordinary portland cement	12269	-	-	1987
8	3927374	06/03/2013	Laxmi Pipe Industries Survey No. 1597/34/9, Visnagar Gandhinagar Highway, Gozaria Mahesana-382825	Precast concrete pipes (with and without reinforcement)	458	-	-	2003
9	3927071	08/03/2013	Rainbow Screen Inc. B.Lubi Industrial Park Vadsar-Khatraj Road, Taluka Kalol Dist.: Gandhinagar-382721	Well screens and slotted pipes	8110	-	-	2000
10	3932771	18/03/2013	Arjun Alloys 21-22, Panchratna Industrial Estate, Near Laxminarayan Petrol Pump, Sarkhej Bavla Highway, Changodar Ahmedabad-382213	Carbon steel cast billet ingots, billets, blooms and slabs for re-rolling into steel for general structural purposes	2830	-	-	2012

1	2	3	4	5	6	7	8	9
11	3932973	18/03/2013	K. P. S. Industries 52, 53, 54 Mona Estate, Opp. Anil Starch Mill, Anil Mill Road, Naroda Road, Ahmedabad-380025	Submersible pumpsets	8034	-	-	2002
12	3933672	20/03/2013	Perfect Ply Industries Pvt. Ltd. Tarapur-Kheda Road, AT & Post: Pariyej TA: Matar, Kheda, Pariyej-388180	Marine plywood	710	-	-	2010
13	3933773	22/03/2013	Nagarjuna Fertilizers & Chemicals Limited Plot No. 2505, 2506, GIDC, Panchamahall Halol-389350	Irrigation equipment- sprinkler pipes	14151	2	-	2008
14	3933470	22/03/2013	Gunnebo India Private Ltd. Plot No. 1302-1306, GIDC Industrial Estate, Champaner Road, Panchamahall Halol-389350	Higher capacity dry powder fire extinguisher (trolley mounted)	10658	-	-	1999
15	3934270	25/03/2013	M Power Aqua Tech Pvt. Ltd. Plot No. 8, Anjali Indl. Estate Vibhag-1, Near Railway Line, Amroli-Sayan Road, AT Post: Gothan, Surat, TAL: Olpad	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
16	3935272	25/03/2013	Sarathi Agro Chem. 1306/5 Phase 4, G.I.D.C. Ahmedabad-382330	Neem based ec containing azadirachtin	14300	-	-	1995
17	3936072	25/03/2013	Shree Ambica Board Industries, Block No. 61, Ujedia Road, Village- Mahiyal, Taluka Talod, Sabarkantha-383215	Veneered decorative plywood	1328	-	-	1996

[No. CMD/13:11]

Dr. S. L. PALKAR, Scientist 'F' &amp; Head

नई दिल्ली, 6 जनवरी, 2014

का०आ० 240.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (5) के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है:-

## अनुसूची

क्र.	लाइसेंस नं.	लाइसेंसधारी का नाम व पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
1	7948911	मैसर्स एस्ट्रल पोलिटेक्निक लि., ब्लॉक नं. 1253, गांव सांतेज, शाह एलोप्स के पास, त. कलोल, जिला गांधीनगर, सांतेज, जिला: गांधीनगर	यू पी वी सी पाईप फार सायल तथा वेस्ट डिस्चार्ज सिस्टम इंसाईड बिल्डिंग इंक्लूडिंग	21/03/2013

[सं० सीएमडी/13:13]

डॉ० एस० एल० पालकर, वैज्ञानिक 'एफ' तथा प्रमुख

New Delhi, the 6th January, 2014

**S.O. 240.**—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled with effect from the date indicated against each:

**SCHEDULE**

Sr.No.	Licences No. CML-	Name and Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of cancellation
No. 1	CML-7948911	M/s. Astral Polytechnic Limited, Block No. 1253, Village Santej, Near Shah Alloys, Taluka Kalol, Dist.: Gandhinagar, Santij	covered by the licence cancelled UPVC pipes for soil and waste discharge systems inside buildings including Ventilation and rain water system IS 13592:1992	21/03/2013

[No. CMD/13:13]

Dr. S. L. PALKAR, Scientist 'F' &amp; Head

**पेट्रोलियम और प्राकृतिक गैस मंत्रालय**

नई दिल्ली, 8 जनवरी, 2014

**का०आ० 241.**—केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में नीचे दी गई अनुसूची के स्तम्भ (1) में उल्लिखित व्यक्ति को उक्त अनुसूची के स्तम्भ (2) में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र की बाबत, उक्त अधिनियम के आधीन सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए प्राधिकृत करती है, अर्थात् :—

**अनुसूची**

प्राधिकारी का नाम और पता	क्षेत्र
जिला राजस्व अधिकारी, कार्यालय उप-आयुक्त, पठानकोट, पंजाब राज्य, जीएसपीएल इन्डिया गैसनेट लिमिटेड (जीआइजीएल), महेसाना-भटिण्डा नेचुरल गैस पाइपलाइन और भटिण्डा-जम्मू-श्रीनगर प्राकृतिक गैस पाइपलाइन नेटवर्क	पठानकोट जिला, पंजाब राज्य

2. यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा० सं० एल-14014/39/2011-जी०पी०]

श्री प्रकाश अग्रवाल, अवर सचिव

**MINISTRY OF PETROLEUM AND NATURAL GAS**

New Delhi, the 8th January, 2014

**S.O. 241.**—In pursuance of clause (a) of section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby Authorizes the person mentioned in column (1) of the Schedule given below to perform the functions of the Competent Authority under the said Act, in respect of the areas mentioned in column (2) of the said Schedule namely:—

**SCHEDULE**

Name and Address of the Authority	Area of Jurisdiction
District Revenue Officer, Office of the Deputy Commissioner Pathankot, Punjab State, GSPL India Gasnet Limited (GIGL) Mehsana - Bhatinda Pipeline and Bhatinda - Jammu Natural Gas Pipeline Network	District of Pathankot (Punjab State)

2. This notification will be effective from the date of its issue.

[F. No. L-14014/39/2011-GP]

S. P. AGARWAL, Under Secy.

**श्रम एवं रोजगार मंत्रालय**

नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 242.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कान्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 125/1999) प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा० सं० एल-14012/92/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 31st December, 2013

**S.O. 242.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 125/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt., New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[F.No. L-14012/92/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, DELHI**

**I.D. No. 125/1999**

Shri Chandrika,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

**Award**

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was

formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Chandrika, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/92/98/IR(DU), New Delhi, dated 19.04.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Chandrika, S/o Shri Vag Nath is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Chandrika, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of June 1980. He had worked for the Officer Commanding in godown or storage or as watchman for about 8 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other



workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation

shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,



- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll, and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 01.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment-M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the county of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer (2002 (3) SSC 25). Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout of

cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked'

used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in August 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from August 1997 to September 1996, August 1996 to September 1995, August 1995 to September 1994, August 1994 to September 1993 and so on. On careful examination of the attendance registers, it

came to light that Ms. Chandrika served for 84 days from August 1997 to September, 1996, 71 days from August 1996 to September 1995, 44 days from August 1995 to September 1994, 192 days from August 1994 to September, 1993, 178 days from August 1993 to September 1992, 146 days from August 1992 to September 1991, 168 days from August 1991 to September 1990 and 10 days from August 1990 to July 1990.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from August 1994 to September 1993, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. It is not the case that the claimant reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that he was employed for a fixed term of contract and his services came to an end on non renewal of contract of employment. It was not asserted that his services were terminated on the ground of continued ill-health. Neither services of the claimant were done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(oo) of the Act. Thus it is obvious that termination of services of the claimant, for any other reason, amounts to retrenchment, as defined by clause (oo) of section 2 of the Act.

22. The claimant had rendered continuous service for a period of one year, as contemplated by section 25-B of the Act, According to him, retrenchment compensation was not paid, which fact was not dispelled by the management. The management was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists* [1964 (1) LLJ 351], *Adaishwar Laal* (1970 Lab.I.C. 936) and *B.M. Gupta* [1979 (1) LLJ 168] announce that subsequent payment of compensation can not validate an invalid order of retrenchment.

23. Claimant deposed that his services were terminated by the management on 31.10.1997 without any notice. He further declares that his earned wages for a period of two months were not paid. Out of facts unfolded by the claimant, it stand crystallized that neither notice nor pay in lieu thereof nor retrenchment compensation was paid to him by the management. Therefore, his



retrenchment is violative of the provisions of section 25-F of the Act.

24. Services of the workman were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

25. In Uma Devi [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workman to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell.

The Court ruled thus:

"With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992 (4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all *ad-hoc*, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

26. In P.Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (Supra) with approval. It also relied the decision in a Uma Rani

[2004(7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, *ad-hoc* or daily rated employee) or payment of regular salaries to them.

27. In Uma Devi (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

28. The claimant was engaged by the management dehors the recruitment rules. No evidence has been brought over the record to project that the management engaged him through employment exchange or an open recruitment process. There is complete vacuum of evidence to the effect that the process through which the claimant was engaged by the management was made known to public at large, so that other eligible candidates may offer their candidature for recruitment. Evidently, it was a back-door entry in service. His engagement by the management was not in consonance with the statutory rules. In view of his wrongful employment, there is no justification for his reinstatement in the service of the management. In the alternative, this Tribunal has to award compensation to the workman in lieu of his reinstatement.

29. No definite yardstick for measuring the quantum of compensation is available. In S.S. Shetty [1957 (11) LLJ

696] the Apex court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

29. A Divisional Bench of the Patna High Court in *B. Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur* (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* (1989 Lab.I.C.1887).

30 In *Assam Oil Co. Ltd.* [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered

that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In *Utkal machinery Ltd.* [1966(1)LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In *A.K. Roy* [1970(1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *anil Kumar Chakaraborty* [1962 (II) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P. Bhandari* [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M.K. Aggarwal* (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In *Yashveer Singh* (1993 Lb.I.C.44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In *Naval Kishor* [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Sant Raj* [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Chandu Lal* (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In *Ras Bihari* 1988 Lab.I.C.107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In *V.V. Rao* (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

31. Claimant rendered one year continuous service to the management, besides other spells which fell sort of 240 days. He was young man, when he was engaged by the management. Now, he had crossed maxima of age, required for recruitment in Government service. He had to contest the case for a period of more than 15 years to seek redressal of his grievances. Keeping in view these facts, I am of the view that an amount of Rs. 30,000.00 as compensation in lieu of reinstatement in service, besides a sum of Rs. 25,000.00 as cost of proceedings would be sufficient to meet the ends of justice. Accordingly the management is commanded to pay compensation to the claimant as quantified above, in lieu of reinstatement of his services, besides cost of proceedings, referred above. An

award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 243.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कान्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 122/1999) प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा०सं एल-42012/87/98/आई आर (डी यू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 243.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 122/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[F.No.L-42012/87/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO.1, DELHI**

**I.D. No. 122/1999**

Shri Gokul Yadav,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

... Workman

Versus

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

... Management

**AWARD**

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary

status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Gokul Yadav, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, vide order No. L-14012/92/98/IR(DU), New Delhi, dated 19.04.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Gokul Yadav, S/o Shri Bechu Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Gokul Yadav, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of June 1986. He had worked for the Officer Commanding in godown or storage or as watchman for about 10 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the mangement, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konical Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.



5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain

whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,

- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994. Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment - M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1993 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1990 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts-Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 TO 31.05.1984, IAFA-Black Cheque from 01.04.1978 To 31.03.1991, IAFA-Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque

FD Imprest Accountg from 01.04.1972 to 31.03.1992, IAFA 177-Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992 IAFA 177-Black Cheque Public Fund Accounts from 01.04.1971 to 31.04.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management as held by the Apex Court in Range Forest Officer (2002 (3) SSC (25) Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reasons whatsoever, otherwise than as a



punishment inflicted by way of disciplinary action, but does not include-

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (ii) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one months' notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one months' notice should have expired before retrenchment is enforced, or the workman as been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days average pay for every one years service or any part thereof provided it exceeds six months.

- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous services for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year of six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen

has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in July 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the

date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from July 97 to August 96, July 96 to August 95, July 95 to August 94, July 94 to August 93 and so on. On careful examination of the attendance registers, it came to light that Shri Gokul Yadav served for 52 days from July 1997 to August 1996, 61 days from July 1996 to August 95, 30 days from July 95 to August 94, 128 days from July 1994 to August 1993, 175 days from July 1993 to August 1992, 111 days from July 1992 to August 1991, 140 days from July 1991 to August 1990, 138 days from July 1990 to August 1989, 85 days from July 1989 to August 1988, 181 days from July 1988 to August 1987 and 96 days from July 1987 to August 1986.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods preferred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has not been able to project that he rendered continuous service of 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 10 years, with the management. At the outset the management denied that the claimant was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 10 years as claimed by him. Evasive reply given by the management was not taken as admission of act by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witnessbox, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 10 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead

cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan State Ganganagar Mills Ltd. [2004 (103) FLR 192] and Essen Deinki [2003 SC (L&S) 113]. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 25.10.2013

Dr. R. K. YADAV, Presiding Officer  
नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 244.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देल्ही कान्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय

सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 124/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा० सं० एल-14012/85/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 244.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 124/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[F.No. L-14012/85/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
No. 1, DELHI**

**I.D. No. 124/1999**

Shri Shyam Narain Yadav,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

Versus

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

**AWARD**

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time, Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Shyam Narain Yadav, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for

adjudication, vide order No. L-14012/85/98/IR(DU), New Delhi, dated 19.04.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Syam Narain Yadav, S/o Shri Murli Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Shyam Narain Yadav, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of June 1993. He had worked for the Officer Commanding in godown or storage or as watchman for about 5 years. He rendered duties from 8 a.m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is

reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off vide order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."



In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively."

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC,

has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts—Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above

records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer (2002 (3) SSC 25). Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the

part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be

as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in September 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from September 1997 to October 1996, September 1996 to October 1995, September 1995 to October 1994 to October 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Shyam Narain Yadav served for 7 days from



September 1997 to October 1996, 54 days from September 1996 to October 1995, 38 days from September 1995 to October 1994, 103 days from September 1994 to October 1993 and 37 days from September 1993 to June 1993.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches national figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has not been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 5 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 5 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 5 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan State Ganganagar Mills Ltd [2004 (103) FLR 192] and Esen Deinki [2003 SC (L&S) 113]. Also see Municipal Corporation, Faridabad [2004

(8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated 25.10.2013

Dr. R. K. YADAV, Presiding Officer  
नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 245.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देल्ही कान्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 120/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा० सं० एल-14012/89/98-आई आर (डीयू)]  
पी० के० वेणुगोपाल, अनुभाग अधिकारी



New Delhi, the 31st December, 2013

**S.O. 245.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 120/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Officer Commanding, Delhi Cantt., New Delhi and their workman, which was received by the Central Government on 26/12/13.

[F.No. L-14012/89/98-IR (DU)]  
P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
DELHI**

#### I.D. No. 120/1999

Shri M.C. Pandey,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091. ... Workman

Versus

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10. ... Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt.(c) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri M.C. Pandey, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/89/98 (DU), New Delhi, dated 19.04.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri M.C. Pandey S/o Shri D.B. Pandey is

legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri M.C. Pandey, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of June 1993. He had worked for the Officer Commanding in godown or storage or as watchman for about 14 years. He rendered duties from 8 a.m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(c) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant opted not to enter the witness box to testify facts. The management also followed suit. Thus, no evidence was adduced by the parties, to substantiate their respective case.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they

or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the high Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted Management

shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the years 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 05.08.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment

Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts—Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

- (c) termination of the services of a workman on the ground of continued ill-health."

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for

that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year."

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the



workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in June 1996. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from June 1996 to July 1995, June 1995 to July 1994, June 1994 to July 1993, June 1993 to July 1992 and so on. On careful examination of the attendance registers, it came to light that Shri M.C. Pandey served for 98 days from June 1996 to July, 1995, 88 days from June 1995 to July 1994, 147 days from June 1994 to July 1993, 59 days from June 1993 to July, 1992, and 36 days from June 1992 to April 1992,

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three

national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 14 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 14 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. As pointed out above, the claimant had not adduced any evidence to establish that he served the management for a period of one year, as contemplated by section 25B of the Act. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. To discharge that onus, the claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

23. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has

also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

24. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated 1.11.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 246.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कर्माडिंग देल्ही कान्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 121/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा० सं० एल-14012/88/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 246.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 121/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt., New Delhi and their workman, which was received by the Central Government on 26/12/13.

[F. No. L-14012/88/98-IR(DU)]

P. K. VANUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, DELHI**

I.D. No. 121/1999

Shri Mahender Yadav - I,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091

...Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Mahender Yadav - I, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/88/98/IR(DU), New Delhi, dated 19.04.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Mahender Yadav - I, S/o Shri Nanku Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Mahender Yadav-1, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of April 1993. He had worked for the Officer Commanding in godown or storage or as watchman for about 5 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of

offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konical Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively."

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the



documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund Account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 01.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992,—90% payment M/s. MS Oberoi & Bros from 01.02.1980 to 15-05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to

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13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health."

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout of cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed

to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workman has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered

continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May, 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in September 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from September, 1997 to October 1996, September 1996 to October 1995, September, 1995 to October 1994, September 1994 to October 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Mahender Yadav - I, served for 43 days from September 1997 to October 1996, 44 days from September 1996 to October 1995, 50 days from September, 1995 to October 1994, 61 days from September 1994 to October 1993.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 5 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 5 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish

that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 5 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan State Ganganagar Mills Ltd. [2004 (103) FLR 192] and Essen Deinki [2003 SC (L&S) 113]. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one month's notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 25.10.2013

DR. R.K. YADAV, Presiding Officer  
नई दिल्ली, 31 दिसम्बर, 2013

कांआ 247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 119/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा सं एल-42012/90/98-आईआर(डीयू)]  
पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 247.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 119/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[F.No. L-42012/90/98-IR(DU)]  
P. K. VANUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, DELHI**

#### I.D. No. 119/1999

Shri Chander Bali Yadav-II,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

Versus

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt.,

New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Chander Bali Yadav II, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-42012/90/98/IR(DU), New Delhi, dated 19.04.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Chander Bali Yadav-II, S/o Shri Nanky is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Chandrika, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of June 1989. He had worked for the Officer Commanding in godown or storage or as watchman for about 8 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col.

Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT



concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively."

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll, and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund Account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water Account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% Payment M/s. MS Oberoi & Bros from 01.02.1980 to 15.5.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for Cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book

from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be

retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

- "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—
- (a) voluntary retirement of the workman; or
  - (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
  - (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
  - (c) termination of the services of a workman on the ground of continued ill-health."

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.



- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25-B has further to show that he has worked

during all the period he has been in the service of the employer for 240 days in the year."

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers,

so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in August 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from August 1997 to September 1996, August 1996 to September 1995, August 1995 to September 1994, August 1994 to September 1993 and so on. On careful examination of the attendance registers, it came to light that Ms. Chander Bali Yadav-II, served for 49 days from August 1997 to September, 1996, 154 days from August 1996 to September 1995, 42 days from August 1995 to September 1994, 155 days from August 1994 to September 1993, and 166 days from August 1993 to September 1992, 138 days from August 1992 to September 1991, 140 days from August 1991 to September 1990 and 42 days from August 1990 to October 1989.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in no of the years he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25-F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 8 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 8 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 8 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days

in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan Sate Ganganagar Mills Ltd. [2004 (103) FLR 192] and Essen Deinki [2003 SC (L&S) 113]. Also see municipal Corporation, Faridabad (2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 24.10.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

का०आ० 248.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 123/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा० सं० एल-14012/86/98-आईआर(डीयू)]  
पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 248.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 123/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[F. No. L-14012/86/98-IR(DU)]  
P. K. VANUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
No. 1, DELHI**

#### I.D. No. 123/1999

Shri Shakal Dev Dubey,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

#### Versus

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization)

Scheme of Government of India, 1993. When Officer Commanding, instead of granting temporary status, terminated services of Shri Shakal Dev Dubey, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, vide order No. L-14012/86/98/IR(DU), New Delhi, dated 19.04.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Shakal Dev Dubey, S/o Shri Vag Nath is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Shakal Dev Dubey, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of June 1993. He had worked for the Officer Commanding in godown or storage or as watchman for about 5 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides



disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which

they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,

- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll, and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 01.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for Cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts — Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment. Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992,

IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the country of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer (2002 (3) SSC 25). Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

- "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a

punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* (1979 (I) LLJ 1) and *Mahabir* (1979 (II) LLJ 363).

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout of cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of Sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by Sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* (1970 (2) LLJ 306), Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if



workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under Sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the

management in October 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from October 1997 to November 1996, October 1996 to November 1995, October 1995 to November 1994, October 1994 to November 1993 and so on. On careful examination of the attendance registers, it came to light that Sh. Shakal Lal Yadav served for 182 days from October 1997 to November, 1996, 138 days from October 1996 to November 1995, 152 days from October 1995 to November 1994, 209 days from October 1994 to November 1993 and 69 days from October 1993 to June 1993.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from August 1994 to September 1993, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. It is not the case that the claimant reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that he was employed for a fixed term of contract and his services came to an end on non-renewal of contract of employment. It was not asserted that his services were terminated on the ground of continued ill-health. Neither services of the claimant were done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(oo) of the Act. Thus it is obvious that termination of services of the claimant, for any other reason, amounts to retrenchment, as defined by clause (oo) of section 2 of the Act.

22. The claimant had rendered continuous service for a period of one year, as contemplated by section 25-B of the Act. According to him, retrenchment compensation was not paid, which fact was not dispelled by the management. The management was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists* [1964 (1) LLJ 351], *Adaishwar Laal* (1970 Lab.I.C. 936) and *B.M. Gupta* [1979 (1) LLJ 168] announce that subsequent payment of compensation can not validate an invalid order of retrenchment.

23. Claimant deposed that his services were terminated by the management on 31.10.1997 without any

notice. He further declares that his earned wages for a period of two months were not paid. Out of facts unfolded by the claimant, it stand crystallized that neither notice nor pay in lieu there of nor retrenchment compensation was paid to him by the management. Therefore, his retrenchment is violative of the provisions of section 25-F of the Act.

24. Services of the workman were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

25. In Uma Devi [2006 (4) SCC I] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workman to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell.

The Court ruled thus:

"With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992 (4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees

engaged without following a regular recruitment procedure should be made permanent".

26. In P.Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (Supra) with approval. It also relied the decision in a Uma Rani [2004(7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

27. In Uma Devi (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

28. The claimant was engaged by the management dehors the recruitment rules. No evidence has been brought over the record to project that the management engaged him through employment exchange or an open recruitment process. There is complete vacuum of evidence to the effect that the process through which the claimant was engaged by the management was made known to public at large, so that other eligible candidates may offer their candidature for recruitment. Evidently, it was a back-door entry in service. His engagement by the management was not in consonance with the statutory rules. In view of his wrongful employment, there is no justification for his reinstatement in the

service of the management. In the alternative, this Tribunal has to award compensation to the workman in lieu of his reinstatement.

29. No definite yardstick for measuring the quantum of compensation is available. In S.S. Shetty [1957 (11) LLJ 696] the Apex court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

30. A Divisional Bench of the Patna High Court in B. Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab.I.C. 1887).

30. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966(1)LLJ 398] the amount of compensation equivalent to two year salary of the empoooyee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy [1970(1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962 (II) LLJ 483] the Count converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C.44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C.107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

31. Claimant rendered one year continuous service to the management, besides other spells which fell sort of 240 days. He was young man, when he was engaged by the management. Now, he had crossed maxima of age, required for recruitment in Government service. He had to contest the case for a period of more than 15 years to seek redressal of his grievances. Keeping in view these facts, I am of the view that an amount of Rs. 30,000.00 as compensation in lieu of reinstatement in service, besides a sum of Rs. 25,000.00 as cost of



proceedings would be sufficient to meet the ends of justice. Accordingly the management is commanded to pay compensation to the claimant as quantified above, in lieu of reinstatement of his services, besides cost of proceedings, referred above. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 1.11.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 249.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 116/1999) प्रकाशित करती है, जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा० सं० एल-14012/95/98-आईआर(डीयू)]  
पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 249.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 116/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[F. No. L-14012/95/98-IR(DU)]  
P. K. VANUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, DELHI**

**I.D. No. 116/1999**

Shri Sangam Lal Yadav,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

#### Versus

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

... Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Sangam Lal Yadav engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/95/98/IR(DU), New Delhi, dated 19.04.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Sangam Lal Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Sangam Lal Yadav, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of April 1990. He had worked for the Officer Commanding in godown or storage or as watchman for about 8 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the mangement, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary

status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konical Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed

by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared

that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll, and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994. Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989, IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest

accounts — Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial



Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the

workman has been paid in lieu of such notice the wages for the period.

- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman

after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given

certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in August 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from August 1997 to September 1996, August 1996 to September 1995, August 1995 to September 1994, August 1994 to September 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Sangam Lal Yadav served for 31 days from August 1997 to September, 1996, 30 days from August 1996 to September 1995, 136 days from August 1994 to September 1993 and 122 days from August 1993 to September 1992, 123 days from August 1992 to September 1991, 135 days from August 1991 to September 1990 and 56 days from August 1990 to April 1990.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly it is obvious that the claimant has not been able to project that he rendered continuous service of 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 8 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 8 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the

claimant made a bald assertion to the effect that he continuously served the management for a period of 8 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year proceeding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan State Ganganagar Mills Ltd. [2004 (103) FLR 192] and Essen Deinki 2003 SC (L&S) 113). Also see Municipal Corporatio, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any

relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated 25.10.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

का०आ० 250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कैंट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 117/1999) प्रकाशित करती है, जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा० सं० एल-14012/93/98-आईआर(डीयू)]  
पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

S.O. 250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 117/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[F.No. L-14012/93/98-IR(DU)]  
P. K. VANUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, DELHI**

**I.D. No. 117/1999**

Shri Bechu Prasad,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

**Versus**

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing

five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt. (C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Bechu Prasad, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, vide order No. L-14012/93/98/IR(DU), New Delhi, dated 19.04.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Bechu Prasad, S/o Shri Vijay Pal is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Bechu Prasad, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of April 1992. He had worked for the Officer Commanding in godown or storage or as watchman for about 6 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the mangement, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konical Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off vide order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain



whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,

- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994. Payment Voucher RIS Accounts from 01.03.1993 to 01.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 1505.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts — Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque

01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp. Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the country of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to



15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* (1970 (2) LLJ 306), Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is

supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in October 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from October 97 to November 96, October 96 to November 95, October 95 to November 94, October 94 to November 93 and so on. On careful examination of the attendance registers, it came to light that Shri Bechu Prasad served for 20 days from October 1997 to November 1996, 43 days from October 1996 to November 1995, 22 days from October 1995 to November 1994, 127 days from October 1994 to November 1993 and 56 days from October 1993 to November 1992.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 6 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 6 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 6 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten

years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan State Ganganagar Mills Ltd. [2004 (103) FLR 192] and Essen Deinki [2003 SC (L&S) 113]. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to protect that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated 25.10.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

कांआ 251.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कान्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 90/1999) प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-42012/75/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 251.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 90/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt., New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[No. L-42012/75/98-IR(DU)]

P. K. VANUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURT COMPLEX, DELHI**

**I.D. No. 90/1999**

Shri Om Prakash,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

Versus

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status,

terminated services of Shri Om Prakash, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, vide order No. L-42012/75/98/IR(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Om Prakash S/o Shri Ram Chander is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Om Prakash, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of May, 1991. He had worked for the Officer Commanding in godown or storage or as watchman for about 7 years. He rendered duties from 8 a.m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October, 1997 were also not paid. He claimed reinstatement in service of the mangement, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konical Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which

came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off vide order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),



- (f) Regiment long roll, and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989, IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November, 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or



- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25-F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned;
- (ii) The notice should specify the reasons for retrenchment;
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period;
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months;
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service

under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25-B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary

disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in July 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from July 97 to August 96, July 96 to August 95, July 95 to August 94, July 94 to August

93 and so on. On careful examination of the attendance registers, it came to light that Shri Om Prakash served for 154 days from July 1997 to August, 1996, 110 days from July 1996 to August 95, 68 days from July 95 to August 94, 178 days from July 1994 to August 1993, 188 days from July 1993 to August 1992, 100 days from July 1992 to August 1991, 160 days from July 1991 to August 1990 and 104 days from July 1990 to October 1989.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has not been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25-F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 7 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 7 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 7 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court,

to prove factum that he had worked with the management for 240 days, in Rajasthan State Ganganagar Mills Ltd. [2004 (103) FLR 192] and Essen Deinki [2003 SC (L&S) 113]. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25-F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated 24.10.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 252.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग दिल्ली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट

(संदर्भ संख्या 91/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-42012/74/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 252.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 91/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt., New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-42012/74/98-IR(DU)]

P. K. VANUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI**

I.D. No. 91/1999

Shri Vinod Kumar,

C/o Sh. M.A. Khan, 5/385,

Trilokpuri, Delhi-110091.

...Workman

#### *Versus*

The Officer Commanding,

226, COY ASC (SUP) Type G,

Delhi Cantt., New Delhi-10.

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Vinod Kumar, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for

adjudication, vide order No. L-42012/74/98/IR(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Vinod Kumar, S/o Shri Ramkhilawan is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Vinod Kumar, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of January 1993. He had worked for the Officer Commanding in godown or storage or as watchman for about 6 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off vide order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall



produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the years 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers

of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994. Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992 IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is



concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such

contract being terminated under a stipulation in that behalf contained therein; or

- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that

even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition

in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in February 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from February 1997 to March 1996, February 1996 to March 1995, February 1995 to March 1994, February 1994 to March 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Vinod Kumar served for 5 day from February 1997 to March 1996, 45 days from February 1996 to March 1995 and 98 days from February 1995 to February 1994.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays.

In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has not been able to project that he rendered continuous service of 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 6 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 6 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 6 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in *Rajasthan State Ganganagar Mills Ltd.* [2004 (103) FLR 192] and *Essen Deinki* [2003 SC (L&S) 113]. Also see *Municipal Corporation, Faridabad* [2004 (8) SCC 195] and *Reserve Bank of India* [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to

prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated 25.10.2013

Dr. R.K. YADAV, Presiding Officer  
नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 253.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग दिल्ली कैन्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 97/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-14012/48/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 253.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 97/1999) of the Central Government Industrial Tribunal/Labour

Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-14012/48/98-IR(DU)]  
P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI**

**I.D. No. 97/1999**

Shri Vijay Shankar,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Vijay Shankar, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/48/98/IR(DU), New Delhi, dated 09.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Vijay Shankar S/o Shri Bechu Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Vijay Shankar, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of May 1989. He had worked for the Officer Commanding in godown or storage or as watchman for about 8 years. He rendered

duties from 8 a.m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant opted not to enter the witness box to testify facts. The management also followed suit. Thus, no evidence was adduced by the parties, to substantiate their respective case.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the



petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

"In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls,

it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001,



Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994. Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts—Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were

more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself

excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout of cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose

of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the

contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May, 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in October, 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from August, 1997 to November, 1996, October, 1996 to November, 1995, October, 1995 to November, 1994, October, 1994 to November, 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Vijay Shankar served for 31 days from October, 1997 to November, 1996, 70 days from October, 1996 to November, 1995, 30 days from October, 1995 to November, 1994, 135 days from October, 1994 to November, 1993, 98 days from October, 1993 to November, 1992, 129 days from October, 1992 to November, 1991, 71 days from October, 1991 to November, 1990, 62 days from October, 1990 to November, 1989 and 43 days from October, 1989 to May, 1989.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years he reaches notional figure of 240 days, to claim continuous service for a period of one

year. Resultantly, it is obvious that the claimant has not been able to project that he rendered continuous service of 240 days to avail benefit of provisions of Section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 8 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 8 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. As pointed out above, the claimant had not adduced any evidence to establish that he served the management for a period of one year, as contemplated by section 25B of the Act. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. To discharge that onus, the claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that he has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

23. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one month's notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with.



He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

24. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 01.11.2013

DR. R.K. YADAV, Presiding Officer  
नई दिल्ली, 31 दिसम्बर, 2013

का०आ० 254.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देल्ही कान्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 93/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-14012/65/98-आईआर(डीयू)]  
पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 254.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 93/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-14012/65/98-IR(DU)]  
P.K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI**

**I.D. No. 93/1999**

Shri Ram Vachan,  
C/o Sh. M.A. Khan, 5/385  
Trilokpuri, Delhi-110091.

...Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Ram Vachan, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, vide order No. L-14012/65/98/IR(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi, Cantt., in terminating services of Shri Ram Vachan is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Ram Vachan, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of August '92. He had worked for the Officer Commanding in godown or storage or as watchman for about 6 years. He rendered duties from 8 a.m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October, 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex.WW1/1 as evidence. He faced rigors of cross-examination also. Col. Konical Satish Kumar tendered his affidavit Ex.MW1/1 as evidence. He also faced rigors of cross-examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off vide order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi,

wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the years 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October, 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared



that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll, and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund Account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water Account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros. from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989, IAFA 175 Receipt for Cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November, 1985, Labour Imprest Accounts—Cash Book from 01.12.1965 to 01.07.1970,

Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October, 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October, 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non-production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer (2002 (3) SSC 25). Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a

new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill-health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* (1979 (I) LLJ 1) and *Mahabir* (1979 (II) LLJ 363).

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout of cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* (1970 (2) LLJ 306), Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar

months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation (1985 (2) LLJ 539)*, wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa (1981 (1) LJ 308)* was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd. (1986 (1) LLJ 34)*. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May, 1983 to December, 1998,

wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in January 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from January, 1997 to December, 1996, January, 1996 to February, 1995, January, 1995 to February, 1994, January, 1994 to February, 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Ram Vachan served for 35 days from January 1997 to February 1996, 11 days from January 1996 to February 1995, 49 days from January 1995 to February 1994, 75 days from January 1994 to February 1993 and 40 days from January 1993 to February 1992.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 6 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 6 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish

that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 6 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan State Ganganagar Mills Ltd. [2004 (103) FLR 192] and Essen Deinki [2003 SC (L&S) 113]. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 24.10.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

का०आ० 255.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 101/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-14012/45/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 255.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 101/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-14012/45/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. I, KARKARDOOMA COURTS COMPLEX,  
DELHI**

**I.D. No. 101/1999**

Shri Mohinder Prasad-II,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt, New Delhi-10.

...Management



**AWARD**

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time, Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Mohinder Prasad-II, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/45/98/IR(DU), New Delhi, dated 09.03.1999, with following terms:

"Whether action of the management of the Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Mohinder Prasad-II is legal and justified? If not, to what relief that workman is entitled?"

2. Claim statement was filed by Shri Mohinder Prasad-II, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of April 1993. He had worked for the Officer Commanding in godown or storage or as watchman for about 5 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross-examination also. Col. Konical Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross-examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:



"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively."

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not

contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994. Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment — M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for Cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of Cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest Accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from

01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the

employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

15. Section 25-F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the

workman has been paid in lieu of such notice the wages for the period.

- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25-B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show

that a workman after satisfying the test under Section 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year."

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given



certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in January 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from January 1997 to December 1996, January 1996 to February 1995, January 1995 to February 1994, January 1994 to February 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Mohinder Prasad-II served for 61 days from January 1997 to February 1996, 28 days from January 1996 to February 1995, 95 days from January 1995 to February 1994 and 88 days from January 1994 to April 1993.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has not been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25-F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 5 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 5 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 5 years. No document such as salary slip or wage receipt or any record or order issued by the management was

brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan State Ganganagar Mills Ltd. [2204 (103) FLR 192] and Essen Deinki [2003 SC(L&S) 113]. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, projection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to protect that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 25.10.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

कांआ 256.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग दिल्ली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 100/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-14012/46/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 256.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 100/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-14012/46/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
No. 1, KARKARDOOMA COURT COMPLEX, DELHI**

I.D. No. 100/1999

Shri Ram Adhar Yadav,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091

....Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

....Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five days week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer

Commanding, instead of granting temporary status, terminated services of Shri Ram Adhar Yadav, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/46/98-IR/(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Ram Adhar Yadav S/o Shri Nanku Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Ram Adhar Yadav, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of June 1984. He had worked for the Officer Commanding in godown or storage or as watchman for about 13 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konical Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was



answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent.

The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,

- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment — M/s. MS Oberoi & Bros. from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt for Cash of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts

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11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment

inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* (1979 (I) LLJ 1) and *Mahabir* (1979 (II) LLJ 363).

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout of cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* (1970 (2) LLJ 306), Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar



year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation (1985 (2) LLJ 539)*, wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa (1981 (1) LJ 308)* was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd. (1986 (1) LLJ 34)*. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in August 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant

were dispensed with, the Tribunal had to count service rendered by the claimant from August 1997 to September 1996, August 1996 to September 1995, August 1995 to September 1994, August 1994 to September 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Ram Adhar Yadav served for 119 days from August 1997 to September, 1996, 78 days from August 1996 to September 1995, 40 days from August 1995 to September 1994, 164 days from August 1994 to September, 1993, 171 days from August 1993 to September 1992, 129 days from August 1992 to September 1991, 134 days from August 1991 to September 1990, 151 days from August 1990 to September 1989, 206 days from August 1989 to September 1988, 153 days from August 1988 to September 1987, 148 days from August 1987 to September 1986, 172 days from August 1986 to September 1985, 140 days from August 1985 to September 1984 and 43 days from August 1984 to June 1984.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from August 1989 to September 1988, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. It is not the case that the claimant reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that he was employed for a fixed term of contract and his services came to an end on non-renewal of contract of employment. It was not asserted that his services were terminated on the ground of continued ill-health. Neither services of the claimant were done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(oo) of the Act. Thus it is obvious that termination of services of the claimant, for any other reason, amounts to retrenchment, as defined by clause (oo) of section 2 of the Act.

22. The claimant had rendered continuous service for a period of one year, as contemplated by section 25-B of the Act, According to him, retrenchment compensation was not paid, which fact was not dispelled by the management. The management was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists (1964 (1) LLJ 351)*, *Adaishwar Laal (1970 Lab.I.C. 936)* and *B.M. Gupta (1979 (1) LLJ 168)* announce that subsequent payment of compensation can not validate an invalid order of retrenchment.



23. Claimant deposed that his services were terminated by the management on 31.10.1997 without any notice. He further declares that his earned wages for a period of two months were not paid. Out of facts unfolded by the claimant, it stand crystallized that neither notice nor pay in lieu thereof nor retrenchment compensation was paid to him by the management. Therefore, his retrenchment is violative of the provisions of section 25-F of the Act.

24. Services of the workman were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it consides that reinstatement with or without conditions will not be fair or proper.

25. In Uma Devi (2006 (4) SCC 1) the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workman to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell.

The Court ruled thus:

"With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh (1992 (4) SCC 118) is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really,

it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

26. In P.Chandra Shekhara Rao and Others (2006 (7) SCC 488) the Apex Court referred Uma Devi's Case (Supra) with approval. It also relied the decision in a Uma Rani (2004(7) SCC 112) and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh (2006 (5) SCC 493) the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. (2007 (1) SCC 408) the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

27. In Uma Devi (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also abvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

28. The claimant was engaged by the management dehors the recruitment rules. No evidence has been brought over the record to project that the management engaged him through employment exchange or an open recruitment process. There is complete vacuum of evidence to the effect that the process through which the claimant was engaged by the management was made known to public at large, so that other eligible candidates may offer their candidature for recruitment. Evidently, it was a back-door entry in service. His engagement by the management was not in consonance with the statutory

rules. In view of his wrongful employment, there is no justification for his reinstatement in the service of the management. In the alternative, this Tribunal has to award compensation to the workman in lieu of his reinstatement.

29. No definite yardstick for measuring the quantum of compensation is available. In *S.S. Shetty* (1957 (11) LLJ 696) the Apex court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

30. A Divisional Bench of the Patna High Court in *B. Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur* (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation.

Furthermore, the rate of such interest is also in discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* (1989 Lab.I.C.1887).

31. In *Assam Oil Co. Ltd.* (1960 (1) LLJ 587) the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In *Utkal Machinery Ltd.* (1966(1)LLJ 398) the amount of compensation equivalent to two year salary of the empoooyee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In *A.K. Roy* (1970(1) LLJ 228) compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *anil Kumar Chakaraborty* (1962 (II) LLJ 483) the Count converted the award of reinstatment into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P. Bhandari* (1986 (II) LLJ 509), the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M.K. Aggarwal* (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In *Yashveer Singh* (1993 Lab.I.C.44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In *Naval Kishor* (1984 (II) LLJ 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Sant Raj* (1985 (II) LLJ 19) a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Chandu Lal* (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In *Ras Bihari* (1988 Lab.I.C.107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In *V.V. Rao* (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

32. Claimant rendered one year continuous service to the management, besides other spells which fell short of 240 days. He was a young man, when he was engaged by the management. Now, he had crossed maxima of age, required for recruitment in Government service. He had to contest the case for a period of more than 15 years to seek redressal of his grievances. Keeping in view these

facts, I am of the view that an amount of Rs. 30,000.00 as compensation in lieu of reinstatement in service, besides a sum of Rs. 25,000.00 as cost of proceedings would be sufficient to meet the ends of justice. Accordingly the management is commanded to pay compensation to the claimant as quantified above, in lieu of reinstatement of his services, besides cost of proceedings, referred above. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 257.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कान्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 99/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-14012/47/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 257.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 99/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-14012/47/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURTS COMPLEX,  
DELHI**

**I.D. No. 99/1999**

Shri Sant Ram Saroj  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

....Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

....Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Sant Ram Saroj, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/47/98/IR(DU), New Delhi, dated 09.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Sant Ram Saroj, S/o Shri Ayodhya Prasad is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Sant Ram Saroj, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of April 1983. He had worked for the Officer Commanding in godown or storage or as watchman for about 14 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the mangement, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was

claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konical Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:—

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the

application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:—

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same".

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files



mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:—

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 01.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment

Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash cse canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the country of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:—

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health."

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:—

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:—

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be

deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year."

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered

continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in August 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from August 1997 to August 1993, July 1996 to August 1995, July 1995 to August 1994, August 1994 to August 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Sant Ram Saroj served for 110 days from July 1997 to August, 1996, 99 days from July 1996 to August 1995, 37 days from July 1995 to August 1994, 176 days from July 1994 to August 1993, 200 days from July 1993 to September 1992, 128 days from July 1992 to August 1991, 137 days from July 1991 to August 1990, 171 and from July 1990 to August 1989, 143 days from July 1989 to August 1988, 135 days from July 1988 to August 1987, 178 days from July 1987 to August 1986, 159 days July 1986 to from August 1985, 190 days from July, 1985 to August, 1984, 201 days from July 1984 to August 1983 and 60 days from July 1983 to May 1983.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from July 1993 to August 1992, July 1985 to August 1984 and July 1984 to August 1983, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. It is not the case that the claimant reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that he was employed for a fixed term of contract and his services came to an end on non-renewal of contract of employment. It was not asserted that his services were terminated on the ground of continued ill-health. Neither services of the claimant were done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(oo) of



the Act. Thus it is obvious that termination of services of the claimant, for any other reason, amounts to retrenchment, as defined by clause (oo) of section 2 of the Act.

22. The claimant had rendered continuous service for a period of one year, as contemplated by section 25-B of the Act, According to him, retrenchment compensation was not paid, which fact was not dispelled by the management. The management was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists* [1964 (1) LLJ 351], *Adaishwar Laal* [1970 Lab.I.C. 936] and *B.M. Gupta* [1979 (1) LLJ 168] announce that subsequent payment of compensation can not validate an invalid order of retrenchment.

23. Claimant deposed that his services were terminated by the management on 31.10.1997 without any notice. He further declares that his earned wages for a period of two months were not paid. Out of facts unfolded by the claimant, it stand crystallized that neither notice nor pay in lieu there of nor retrenchment compensation was paid to him by the management. Therefore, his retrenchment is violative of the provisions of section 25-F of the Act.

24. Services of the workman were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

25. In *Uma Devi* [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workman to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell.

The Court ruled thus:—

"With respect, why should the State be allowed to depart from the normal rule and indulge in temporary

employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in *Piara Singh* [1992 (4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent."

26. In *P. Chandra Shekhara Rao and Others* [2006 (7) SCC 488] the Apex Court referred *Uma Devi's Case* (Supra) with approval. It also relied the decision in *Uma Rani* [2004(7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In *Somveer Singh* [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In *Indian Drugs & Pharmaceuticals Ltd.* [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

27. In *Uma Devi* (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where



they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedents neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

28. The claimant was engaged by the management dehors the recruitment rules. No evidence has been brought over the record to project that the management engaged him through employment exchange or an open recruitment process. There is complete vacuum of evidence to the effect that the process through which the claimant was engaged by the management was made known to public at large, so that other eligible candidates may offer their candidature for recruitment. Evidently, it was a back-door entry in service. His engagement by the management was not in consonance with the statutory rules. In view of his wrongful employment, there is no justification for his reinstatement in the service of the management. In the alternative, this Tribunal has to award compensation to the workman in lieu of his reinstatement.

29. No definite yardstick for measuring the quantum of compensation is available. In *S.S. Shetty* [1957 (11) LLJ 696] the Apex court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:—

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is

possible bearing, of course in mind all the relevant factors pro and con."

30. A Divisional Bench of the Patna High Court in *B. Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur* (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* [1989 Lab.I.C.1887].

31. In *Assam Oil Co. Ltd.* [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In *Utkal Machinery Ltd.* [1966(1)LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In *A.K. Roy* [1970(1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *Anil Kumar Chakarabarty* [1962 (II) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P. Bhandari* [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M.K. Aggarwal* (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In *Yashveer Singh* (1993 Lab. I.C. 44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In *Naval Kishor* [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was

awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab. I.C.107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

32. Claimant rendered three years continuous service to the management, besides other spells which fell sort of 240 days. He was young man, when he was engaged by the management. Now, he had crossed maxima of age, required for recruitment in Government service. He had to contest the case for a period of more than 15 years to seek redressal of his grievances. Keeping in view these facts, I am of the view that an amount of Rs. 75,000.00 as compensation in lieu of reinstatement in service, besides a sum of Rs. 25,000.00 as cost of proceedings would be sufficient to meet the ends of justice. Accordingly the management is commanded to pay compensation to the claimant as quantified above, in lieu of reinstatement of his services, besides cost of proceedings, referred above. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 4.11.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

का०आ० 258.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देल्ही कान्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचात (संदर्भ संख्या 98/1999) प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-14012/49/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 258.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 98/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt., New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[No. L-14012/49/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

## ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI**

**I.D. No. 98/1999**

Shri Hari Shankar,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

## AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Hari Shankar, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/92/49/IR(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Hari Shankar, S/o Shri Bansi Lal Pal is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Hari Shankar, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of May 1989. He had worked for the Officer Commanding in godown or storage or as watchman for about 8 years. He rendered duties from 8 a.m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW1/1 as evidence. He faced rigors of cross-examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW1/1 as evidence. He also faced rigors of cross-examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its

findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983—1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of



the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll; and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher

Soda Water Account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 01.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 3.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592—596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal



clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non-production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of

superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

15. Section 25-F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned;
- (ii) The notice should specify the reasons for retrenchment;
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period;
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months;
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout of cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than

240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed

that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in August 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from August 1997 to September 1996, August 1996 to September 1995, August 1995 to September 1994, August 1994 to September 1993 and so on. On careful examination of the attendance registers, it came to light that Hari Shankar served for 48 days from August 1997 to September, 1996, 36 days from August 1996 to September 1995, 26 days from August 1995 to September 1994, 147 days from August 1994 to September, 1993, 148 days from August 1993 to September 1992, 106 days from August 1992 to September 1991, 145 days from August 1991 to September 1990 and 119 days from August 1990 to September 1989 and 70 days from August 1989 to May 1989.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from August 1990 to September 1989, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25-F of the Act.

21. It is not the case that the claimant reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that he was employed for a fixed term of contract and his services came to an end on non-renewal of contract of employment. It was not asserted that his services were terminated on the ground of continued ill-health. Neither services of the claimant were done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(oo) of the Act. Thus it is obvious that termination of services of the claimant, for any other reason, amounts to retrenchment, as defined by clause (oo) of section 2 of the Act.

22. The claimant had rendered continuous service for a period of one year, as contemplated by section 25-B of the Act. According to him, retrenchment compensation was not paid, which fact was not dispelled by the management. The management was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists* [1964 (1) LLJ 351], *Adaishwar Laal* [1970 Lab.I.C. 936] and *B.M. Gupta* [1979 (1) LLJ 168] announce that subsequent payment of compensation can not validate an invalid order of retrenchment.

23. Claimant deposed that his services were terminated by the management on 31.10.1997 without any notice. He further declares that his earned wages for a period of two months were not paid. Out of facts unfolded by the claimant, it stand crystallized that neither notice nor pay in lieu thereof nor retrenchment compensation was paid to him by the management. Therefore, his retrenchment is violative of the provisions of section 25-F of the Act.

24. Services of the workman were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

25. In *Uma Devi* [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages

can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workman to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell.

The Court ruled thus:

"With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here-can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in *Piara Singh* [1992 (4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

26. In *P.Chandra Shekhara Rao and Others* [2006 (7) SCC 488] the Apex Court referred *Uma Devi's Case* (Supra) with approval. It also relied the decision in *Uma Rani* [2004(7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In *Somveer Singh* [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In *Indian Drugs & Pharmaceuticals Ltd.* [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

27. In *Uma Devi* (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate

expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

28. The claimant was engaged by the management dehors the recruitment rules. No evidence has been brought over the record to project that the management engaged him through employment exchange or an open recruitment process. There is complete vacuum of evidence to the effect that the process through which the claimant was engaged by the management was made known to public at large, so that other eligible candidates may offer their candidature for recruitment. Evidently, it was a backdoor entry in service. His engagement by the management was not in consonance with the statutory rules. In view of his wrongful employment, there is no justification for his reinstatement in the service of the management. In the alternative, this Tribunal has to award compensation to the workman in lieu of his reinstatement.

29. No definite yardstick for measuring the quantum of compensation is available. In *S.S. Shetty* [1957 (11) LLJ 696] the Apex court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when

such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

30. A Divisional Bench of the Patna High Court in *B. Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur* (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable; (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age; (iv) Length of service in the establishment; (v) capacity of the employer to pay and the nature of the employer's business; (vi) gainful employment in mitigation of damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* (1989 Lab.I.C.1887).

31. In *Assam Oil Co. Ltd.* [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In *Utkal machinery Ltd.* [1966(1)LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In *A.K. Roy* [1970(1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *Anil Kumar Chakarabarty* [1962 (II) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P. Bhandari* [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M.K. Aggarwal*



(1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh [1993 Lb.I.C.44] the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C.107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

32. Claimant rendered one year continuous service to the management, besides other spells which fell sort of 240 days. He was young man, when he was engaged by the management. Now, he had crossed maxima of age, required for recruitment in Government service. He had to contest the case for a period of more than 15 years to seek redressal of his grievances. Keeping in view these facts, I am of the view that an amount of Rs. 30,000.00 as compensation in lieu of reinstatement in service, besides a sum of Rs. 25,000.00 as cost of proceedings would be sufficient to meet the ends of justice. Accordingly the management is commanded to pay compensation to the claimant as quantified above, in lieu of reinstatement of his services, besides cost of proceedings, referred above. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 1.11.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

का०आ० 259.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कर्माडिंग देल्ही कान्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 102/1999) प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-14012/54/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

S.O. 259.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 102/1999) of the Central Government Industrial Tribunal/

Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[No. L-14012/54/98-IR(DU)]

P. K. VANUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURTS COMPLEX,  
DELHI**

#### I.D. No. 102/1999

Shri Ashok Kumar Yadav,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

.....Workman

#### Versus

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

.....Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered at least 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Ashok Kumar Yadav, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, vide order No. L-14012/54/98-IR(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Ashok Kumar Yadav, S/o Shri Dwarka Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Ashok Kumar Yadav, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of August 1989. He had worked for the Officer Commanding in godown or storage or as watchman for about 8 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders at least 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross-examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of write petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in

the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the years 1983—1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund Account from

01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water Account from 01.04.1989 to 31.03.1994. Payment Voucher RIS Accounts from 01.03.1993 to 01.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989, IAFA 175 Receipt for Cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt for Receipt of cash CSE canteen account from 01.07.1977 to 30-3-1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.



12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592—596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non-production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for



that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act, will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act, specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he

was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in July 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from July 97 to August 96, July 96 to August 95, July 95 to August 94, July 94 to August 93 and so on. On careful examination of the attendance registers, it came to light that Shri Ashok Kumar Yadav served for 139 days from July 1997 to August 1996, 98 days from July 1996 to August 1995, 85 days from July 1995 to August 1994, 152 days from July 1994 to August 1993, 94 days from July 1993 to August 1992, 107 days from July 1992 to August 1991, 145 days from July 1991 to August 1990, 80 days from July 1990 to February 1990.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240

days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25-F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 8 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 8 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witnessbox, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 8 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan State Ganganagar Mills Ltd [2004 (103) FLR 192] and Essen Deinki [2003 SC (L&S) 113]. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted

not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his service were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 24.10.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 260.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग दिल्ली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 115/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-14012/94/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 260.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 115/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt., New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[No. L-14012/94/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKAR DOOMA COURTS COMPLEX, DELHI**

**I.D. No. 115/1999**

Shri Raj Kumar,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

.....Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

.....Management

**AWARD**

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Raj Kumar, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, vide order No. L-14012/94/98/IR(DU), New Delhi, dated 19.04.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Raj Kumar, S/o Shri Sar Dev is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Raj Kumar, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of January 1989. He had worked for the Officer Commanding in godown or storage or as watchman for about 8 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month

of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant opted not to enter the witness box to testify facts. The management also followed suit. Thus, no evidence was adduced by the parties, to substantiate their respective case.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.



The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off vide order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the years 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess



01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts — Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the

proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplus age in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health.

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further

excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act.

Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on

which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in March 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from March 1997 to April 1996, March 1996 to April 1995, March 1995 to April 1994, March 1994 to April 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Raj Kumar served for 11 days from March 1997 to April 1996, 37 days from March 1996 to April 1995, 54 days from March 1995 to April 1994, 108 days from March 1994 to April 1993, 113 days from March 1993 to April 1992, 67 days from March 1992 to April 1991, 137 days from March 1991 to April 1990 and 124 days from March 1990 to March 1989.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has not been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 8 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 8 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. As pointed out above, the claimant had not adduced any evidence to establish that he served the management for a period of one year, as contemplated by section 25B of the Act. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. To discharge that onus, the claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

23. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

24. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 1.11.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 261.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कर्माडिंग देल्ही कान्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 105/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-14012/62/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 261.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 105/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-14012/62/98-IR(DU)]

P. K. VANUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURTS COMPLEX,  
DELHI**

#### I.D. No. 105/1999

Shri Ram Niwas Yadav,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

....Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

....Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt.,

New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Ram Niwas Yadav, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, vide order No. L-14012/62/98/IR(DU), New Delhi, dated 09.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Ram Niwas Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Ram Niwas Yadav, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of October 1987. He had worked for the Officer Commanding in godown or storage or as watchman for about 10 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konical Satish Kumar tendered his affidavit Ex. MW 1/1



as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off vide order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records

of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,

- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 01.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989, IFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IFA—Black Cheque from 01.04.1978 to 31.03.1991, IFA—Red Cheque 01.01.1977 to 31.03.1991, IFA 176 Black Cheque

FD Imprest Account from 01.04.1972 to 31.03.1992, IFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the country of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer (2002 (3) SSC 25). Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason

whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* (1979 (I) LLJ 1) and *Mahabir* (1979 (II) LLJ 363).

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout of cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* (1970 (2) LLJ 306), Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the



Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* (1985 (2) LLJ 539), wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* (1981 (1) LJ 308) was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* (1986 (1) LLJ 34). Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in September 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service

rendered by the claimant from September 97 to October 96, September 96 to October 95, September 95 to October 94, September 94 to October 93 and so on. On careful examination of the attendance registers, it came to light that Shri Ram Niwas Yadav served for 35 days from September 1997 to October, 1996, 67 days from September 95 to October 94, 151 days from September 1994 to October 1993, 169 days from September 1993 to October 1992, 146 days from September 1992 to October 1991, 132 days from September 1991 to October 1990, 166 days from September 1990 to October 1989, 199 days from September 1989 to October 1988 and 144 days from September 1988 to October 1987.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from September 1989 to October 1988, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. It is not the case that the claimant reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that he was employed for a fixed term of contract and his services came to an end on nonrenewal of contract of employment. It was not asserted that his services were terminated on the ground of continued ill-health. Neither services of the claimant were done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(oo) of the Act. Thus it is obvious that termination of services of the claimant, for any other reason, amounts to retrenchment, as defined by clause (oo) of section 2 of the Act.

22. The claimant had rendered continuous service for a period of one year, as contemplated by section 25-B of the Act, According to him, retrenchment compensation was not paid, which fact was not dispelled by the management. The management was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists* (1964 (1) LLJ 351), *Adaishwar Laal* (1970 Lab.I.C. 936) and *B.M. Gupta* (1979 (1) LLJ 168) announce that subsequent payment of compensation can not validate an invalid order of retrenchment.

23. Claimant deposed that his services were terminated by the management on 31.10.1997 without any notice. He further declares that his earned wages for a period of two months were not paid. Out of facts unfolded by the claimant, it stand crystallized that neither notice



nor pay in lieu there of nor retrenchment compensation was paid to him by the management. Therefore, his retrenchment is violative of the provisions of section 25-F of the Act.

24. Services of the workman were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

25. In *Uma Devi* (2006 (4) SCC 1) the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workman to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell.

The Court ruled thus:

"With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in *Piara Singh* (1992 (4) SCC 118) is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

26. In *P. Chandra Shekhara Rao and Others* (2006 (7) SCC 488) the Apex Court referred *Uma Devi's Case* (Supra)

with approval. It also relied the decision in *Uma Rani* (2004(7) SCC 112) and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In *Somveer Singh* (2006 (5) SCC 493) the Apex Court ruled that appointment made without following due procedure cannot be regularized. In *Indian Drugs & Pharmaceuticals Ltd.* (2007 (1) SCC 408) the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

27. In *Uma Devi* (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

28. The claimant was engaged by the management dehors the recruitment rules. No evidence has been brought over the record to project that the management engaged him through employment exchange or an open recruitment process. There is complete vacuum of evidence to the effect that the process through which the claimant was engaged by the management was made known to public at large, so that other eligible candidates may offer their candidature for recruitment. Evidently, it was a back-door entry in service. His engagement by the management was not in consonance with the statutory rules. In view of his wrongful employment, there is no justification for his reinstatement in the service of the management. In the alternative, this Tribunal has to award compensation to the workman in lieu of his reinstatement.

29. No definite yardstick for measuring the quantum of compensation is available. In *S.S. Shetty* (1957 (11) LLJ 696) the Apex Court indicated some relevant factors

which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

30. A Divisional Bench of the Patna High Court in *B. Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur* (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* (1989 Lab.I.C. 1887).

31. In *Assam Oil Co. Ltd.* (1960 (1) LLJ 587) the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In *Utkal*

*machinery Ltd.* (1966(1)LLJ 398) the amount of compensation equivalent to two year salary of the empoooyee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In *A.K. Roy* (1970(1) LLJ 228) compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *anil Kumar Chakaraborty* (1962 (II) LLJ 483) the Count converted the award of reinstatment into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P. Bhandari* (1986 (II) LLJ 509), the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M.K. Aggarwal* (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In *Y ashveer Singh* (1993 Lb.I.c.44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In *Naval Kishor* (1984 (II) LLJ 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Sant Raj* (1985 (II) LLJ 19) a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Chandu Lal* (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In *Ras Bihari* 1988 Lab.I.C.107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed ellewhere. In *V.V. Rao* (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

32. Claimant rendered one year continuous service to the management, besides other spells which fell sort of 240 days. He was young man, when he was engaged by the management. Now, he had crossed maximum of age, required for recruitment in Government service. He had to contest the case for a period of more than 15 years to seek redressal of his grievances. Keeping in view these facts, I am of the view that an amount of Rs. 30,000.00 as compensation in lieu of reinstatement in service, besides a sum of Rs. 25,000.00 as cost of proceedings would be sufficient to meet the ends of justice. Accordingly the management is commanded to pay compensation to the claimant as quantified above, in lieu of reinstatement of his services, besides cost of proceedings, referred above. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 4.11.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 262.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग दिल्ली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं० 1 के पंचाट (संदर्भ संख्या 104/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-14012/78/98-आईआर( डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 262.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 104/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[No. L-14012/78/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, DELHI**

**I.D. No. 104/1999**

Shri Sardar Yadav  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

....Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

....Management

**AWARD**

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of

Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Sardar Yadav engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/78/98/IR(DU), New Delhi, dated 9.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Sardar Yadav, S/o Shri Nanku Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Sardar Yadav pleading therein that he was engaged as a casual labour by Officer Commanding in the month of May 1989. He had worked for the Officer Commanding in godown or storage or as watchman for about 8 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt (C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned

only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively."

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 05.08.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect



was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll, and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989, IAFA 175 Receipt for Cash/Cheque Regiment Account from

01.01.1962 to 30.03.1977, IAFA 175 Receipt of Cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest Accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non-production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health."

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year."

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is

crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in September 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from September 1997 to October 1996, September 1996 to October 1995, September 1995, to October 1994, September 1994 to October 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Sardar Yadav served for 57 days from September 1997 to October, 1996, 151 days from September 1996 to October 1995, 70 days from September 1995 to October 1994, 152 days from September, 1994 to October 1993, 130 days from September 1993 to October 1992, and 169 days from September 1992 to October 1991, 164 days from September 1991 to October 1990, 158 days from September 1990 to June 1990 and 75 days from September 1989 to May 1989.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 8 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the

subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 10 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 8 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan Sate Ganganagar Mills Ltd [2004 (103) FLR 192] and Essen Deinki [2003 SC (L&S) 113]. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

कांआ 263.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 103/1999) प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-14012/55/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 263.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 103/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-14012/55/98-IR(DU)]

P. K. VANUGOPAL, Section Officer

**ANNEXURE**

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, DELHI**



**I.D. No. 103/1999**

Shri Ganga Ram,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

....Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

....Management

**AWARD**

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Ganga Ram, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/55/98/IR(DU), New Delhi, dated 09.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Ganga Ram S/o Shri Moti Ram Sajivan Tiwari is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Ganga Ram pleading therein that he was engaged as a casual labour by Officer Commanding in the month of March 1993. He had worked for the Officer Commanding in godown or storage or as watchman for about 5 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no

relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant

seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows.

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994. Payment Voucher RIS Accounts from 01.03.1993 to 01.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level

Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp. Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account

of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health."

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. (1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions prerequisite to retrenchment, which are as follows:



- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

“Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry.

Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year.”

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998,



wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in August 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from August 97 to September 96, August 96 to September 95, August 95 to September 94, August 94 to September 93 and so on. On careful examination of the attendance registers, it came to light that Ganga Ram served for 31 days from August 1997 to September, 1996, 16 days from August 1996 to September 1995, 38 days from August 1995 to September 1994, 127 days from August 1994 to September, 1993 and 44 days from August 1993 to March 1993.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has not been able to project that he rendered continuous service of 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 5 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 5 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 5 years. No document such as salary slip or wage receipt or any record or order

issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan State Ganganagar Mills Ltd. [2004 (103) FLR 192] and Essen Deinki 2003 SC (L&S) 113. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to protect that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 25.10.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

**कांआ 264.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कान्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 88/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-14012/59/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 264.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 88/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt., New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[No. L-14012/59/98-IR(DU)]

P. K. VANUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DELHI

I.D. No. 88/1999

Shri Har Govind,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Har Govind, engaged as a casual labour, he raised

an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/59/98/IR(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Har Govind S/o Shri Luxman Singh is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Har Govind, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of May 1993. He had worked for the Officer Commanding in godown or storage or as watchman for about 5 years. He rendered duties from 8 a.m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of

the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively."

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC,



has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment — M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for Cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts — Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp. Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records

were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period *per se* without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the



workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

- (c) termination of the services of a workman on the ground of continued ill-health."

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of Sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in

continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by Sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year."

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under Sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily

comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in October 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from October 1997 to November 1996, October 1996 to November 1995, October 1995 to November 1994, October 1994 to November 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Har Govind served for 203 days from October 1997 to November, 1996, 194 days from October 1996 to November 1995, 185 days from October 1995 to November 1994, 230 days from October 1994 to November 1993 and 105 days from October 1993 to May 1993.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above,

in the year reckoned from October 1997 to November 1996, October 1996 to November 1995 and October 1994 to November 1993, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. It is not the case that the claimant reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that he was employed for a fixed term of contract and his services came to an end on nonrenewal of contract of employment. It was not asserted that his services were terminated on the ground of continued ill-health. Neither services of the claimant were done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(oo) of the Act. Thus it is obvious that termination of services of the claimant, for any other reason, amounts to retrenchment, as defined by clause (oo) of section 2 of the Act.

22. The claimant had rendered continuous service for a period of one year, as contemplated by section 25-B of the Act. According to him, retrenchment compensation was not paid, which fact was not dispelled by the management. The management was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists* [1964 (1) LLJ 351], *Adaishwar Laal* [1970 Lab.I.C. 936] and *B.M. Gupta* [1979 (1) LLJ 168] announce that subsequent payment of compensation can not validate an invalid order of retrenchment.

23. Claimant deposed that his services were terminated by the management on 31.10.1997 without any notice. He further declares that his earned wages for a period of two months were not paid. Out of facts unfolded by the claimant, it stand crystallized that neither notice nor pay in lieu there of nor retrenchment compensation was paid to him by the management. Therefore, his retrenchment is violative of the provisions of section 25-F of the Act.

24. Services of the workman were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

25. In *Uma Devi* [2006 (4) SCC I] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workman to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell.

The Court ruled thus:

"With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in *Piara Singh* [1992 (4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

26. In *P. Chandra Shekhara Rao and Others* [2006 (7) SCC 488] the Apex Court referred *Uma Devi's Case* (Supra) with approval. It also relied the decision in *Uma Rani* [2004(7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In *Somveer Singh* [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In *Indian Drugs & Pharmaceuticals Ltd.* [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees de hors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

27. In *Uma Devi* (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant

rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

28. The claimant was engaged by the management de hors the recruitment rules. No evidence has been brought over the record to project that the management engaged him through employment exchange or an open recruitment process. There is complete vacuum of evidence to the effect that the process through which the claimant was engaged by the management was made known to public at large, so that other eligible candidates may offer their candidature for recruitment. Evidently, it was a back-door entry in service. His engagement by the management was not in consonance with the statutory rules. In view of his wrongful employment, there is no justification for his reinstatement in the service of the management. In the alternative, this Tribunal has to award compensation to the workman in lieu of his reinstatement.

29. No definite yardstick for measuring the quantum of compensation is available. In *S.S. Shetty* [1957 (11) LLJ 696] the Apex court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be



computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

30. A Divisional Bench of the Patna High Court in *B. Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur* (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* (1989 Lab.I.C. 1887).

31. In *Assam Oil Co. Ltd.* [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In *Utkal Machinery Ltd.* [1966(1)LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In *A.K. Roy* [1970(1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *Anil Kumar Chakaraborty* [1962 (II) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P. Bhandari* [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M.K. Aggarwal* [1988 Lab.I.C.380], the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what

would otherwise be payable to the employee. In *Yashveer Singh* [1993 Lab.I.C.44] the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In *Naval Kishor* [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Sant Raj* [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Chandu Lal* (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In *Ras Bihari* 1988 Lab.I.C.107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In *V.V. Rao* (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

32. Claimant rendered three years' continuous service to the management, besides other spells which fell sort of 240 days. He was a young man, when he was engaged by the management. Now, he had crossed maxima of age, required for recruitment in Government service. He had to contest the case for a period of more than 15 years to seek redressal of his grievances. Keeping in view these facts, I am of the view that an amount of Rs. 75,000.00 as compensation in lieu of reinstatement in service, besides a sum of Rs. 25,000.00 as cost of proceedings would be sufficient to meet the ends of justice. Accordingly the management is commanded to pay compensation to the claimant as quantified above, in lieu of reinstatement of his services, besides cost of proceedings, referred above. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 4.11.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

कांआ 265.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग दिल्ली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 87/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-14012/60/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

S.O. 265.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 87/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the



management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-14012/60/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

# ANNEXURE

## BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DELHI

### I.D. No. 87/1999

Shri Sardar Yadav  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

....Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

....Management

### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Sardar Yadav, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/60/98-IR(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Sardar Yadav, S/o Shri Hardev Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Sardar Yadav, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of June 1987. He had worked for the Officer Commanding in godown or storage or as watchman for about 10 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization

of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the mangement, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant opted not to enter the witness box to testify facts. The management also followed suit. Thus, no evidence was adduced by the parties, to substantiate their respective case.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively."

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to

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11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

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rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained

in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the

industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and



holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in September 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from September 1997 to October 1996, September 1996 to October 1995, September 1995 to October 1994, September 1994 to October 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Sardar Yadav served for 26 days from September 1997 to October, 1996, 87 days from September 1996 to October 1995, 54 days from September 1995 to October 1994, 116 days from September 1994 to October, 1993, 148 days from September 1993 to October 1992, and 108 days from September 1992 to March 1992.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 10 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 10 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. As pointed out above, the claimant had not adduced any evidence to establish that he served the management for a period of one year, as contemplated by section 25B of the Act. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. To discharge that onus, the claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

23. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

24. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 1.11.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 266.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कान्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 85/1999) प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[फा० सं० एल-14012/63/98-आईआर(डीयू)]  
पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 266.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 85/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt., New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[F.No. L-14012/63/98-IR(DU)]  
P. K. VENUGOPAL, Section Officer  
**ANNEXURE**

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, DELHI**

I.D. No. 85/1999

Shri Jai Govind,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

#### **AWARD**

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding,

instead of granting temporary status, terminated services of Shri Jai Govind, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, vide order No. L-14012/63/98/IR(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Jai Govind, S/o Shri Ram Sajivan Tiwari is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Jai Govind, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of June 1993. He had worked for the Officer Commanding in godown or storage or as watchman for about 10 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013.

The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the

petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value.



10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros. from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment.

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13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or



- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health."

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions prerequisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a

fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in atleast 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* [1985 (2) LLJ 539], wherein it was ruled

that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in September 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from September 1997 to October 1996, September 1996 to October 1995, September 1995 to October 1994, September 1994 to October 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Jai Govind served for 36 days from September 1997 to October, 1996, 77 days from September 1996 to October 1995, 45 days from September 1995 to October 1994, 138 days from September 1994 to October, 1993, 150 days from September 1993 to October 1992, 179 days from September 1992 to October 1991, 130 days from September 1991 to October 1990, 148 days from September 1990 to

October 1989, 197 days from September 1989 to October 1988 and 112 days from September 1988 to October 1987.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from September 1989 to October 1988, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. It is not the case that the claimant reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that he was employed for a fixed term of contract and his services came to an end on non-renewal of contract of employment. It was not asserted that his services were terminated on the ground of continued ill-health. Neither services of the claimant were done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(oo) of the Act. Thus it is obvious that termination of services of the claimant, for any other reason, amounts to retrenchment, as defined by clause (oo) of section 2 of the Act.

22. The claimant had rendered continuous service for a period of one year, as contemplated by section 25-B of the Act, According to him, retrenchment compensation was not paid, which fact was not dispelled by the management. The management was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists* (1964 (1) LLJ 351), *Adaishwar Laal* (1970 Lab.I.C. 936) and *B.M. Gupta* (1979 (1) LLJ 168) announce that subsequent payment of compensation can not validate an invalid order of retrenchment.

23. Claimant deposed that his services were terminated by the management on 31.10.1997 without any notice. He further declares that his earned wages for a period of two months were not paid. Out of facts unfolded by the claimant, it stand crystallized that neither notice nor pay in lieu there of nor retrenchment compensation was paid to him by the management. Therefore, his retrenchment is violative of the provisions of section 25-F of the Act.

24. Services of the workman were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of

re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

25. In *Uma Devi* (2006 (4) SCC I) the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workman to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell.

The Court ruled thus:

"With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent—the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in *Piara Singh* (1992 (4) SCC 118) is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent".

26. In *P. Chandra Shekhara Rao and Others* (2006 (7) SCC 488) the Apex Court referred *Uma Devi's Case* (Supra) with approval. It also relied the decision in *Uma Rani* (2004 (7) SCC 112) and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In *Somveer Singh* (2006 (5) SCC 493) the Apex Court ruled that appointment made without following due procedure cannot be regularized. In *Indian Drugs & Pharmaceuticals Ltd.* (2007 (1) SCC 408) the Apex Court reiterated the law and announced that the rules of recruitment cannot be

relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

27. In *Uma Devi* (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

28. The claimant was engaged by the management dehors the recruitment rules. No evidence has been brought over the record to project that the management engaged him through employment exchange or an open recruitment process. There is complete vacuum of evidence to the effect that the process through which the claimant was engaged by the management was made known to public at large, so that other eligible candidates may offer their candidature for recruitment. Evidently, it was a back-door entry in service. His engagement by the management was not in consonance with the statutory rules. In view of his wrongful employment, there is no justification for his reinstatement in the service of the management. In the alternative, this Tribunal has to award compensation to the workman in lieu of his reinstatement.

29. No definite yardstick for measuring the quantum of compensation is available. In *S.S. Shetty* (1957 (11) LLJ 696) the Apex court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the

possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by Industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

29. A Divisional Bench of the Patna High Court in *B. Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur* (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* (1989 Lab.I.C. 1887).

30. In *Assam Oil Co. Ltd.* (1960 (1) LLJ 587) the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In *Utkal Machinery Ltd.* (1966(1)LLJ 398) the amount of compensation equivalent to two year salary of the employee awarded by the Industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary

of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In *A.K. Roy* (1970(1) LLJ 228) compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *Anil Kumar Chakaraborty* (1962 (II) LLJ 483) the Count converted the award of reinstatement into compensation of a sum of Rs. 50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P. Bhandari* (1986 (II) LLJ 509), the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M.K. Aggarwal* (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In *Yashveer Singh* (1993 Lab.I.C.44) the court directed payment of Rs. 75000 in view of reinstatement with back wages. In *Naval Kishor* (1984 (II) LLJ 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Sant Raj* (1985 (II) LLJ 19) a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Chandu Lal* (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In *Ras Bihari* 1988 Lab.I.C.107) a compensation of Rs. 65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In *V.V. Rao* (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

31. Claimant rendered one year continuous service to the management, besides other spells which fell sort of 240 days. He was young man, when he was engaged by the management. Now, he had crossed maxima of age, required for recruitment in Government service. He had to contest the case for a period of more than 15 years to seek redressal of his grievances. Keeping in view these facts, I am of the view that an amount of Rs. 30,000.00 as compensation in lieu of reinstatement in service, besides a sum of Rs. 25,000.00 as cost of proceedings would be sufficient to meet the ends of justice. Accordingly the management is commanded to pay compensation to the claimant as quantified above, in lieu of reinstatement of his services, besides cost of proceedings, referred above. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 1.11.2013

Dr. R.K. YADAV, Presiding Officer



नई दिल्ली, 31 दिसम्बर, 2013

कांआ 267.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग दिल्ली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 84/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-14012/64/98-आईआर(डीयू)]  
पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 267.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 84/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-14012/64/98-IR(DU)]  
P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DELHI

#### I.D. No. 84/1999

Shri Shrikant,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

....Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

....Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services

of Shri Shrikant, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, vide order No. L-14012/64/98/IR(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Shrikant, S/o Shri Krishna Kumar is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Shrikant, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of March 1993. He had worked for the Officer Commanding in godown or storage or as watchman for about 5 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal

for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off vide order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll, and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC,

has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989, IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt for Cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts—Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does

not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or



- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions prerequisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180)

it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of



service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in July 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from July 1997 to August 1996, July 1996 to August 1995, July 1995 to August 1994, July 1994 to August 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Shrikant served for 108 days from July 1997 to August 1996, 107 days from July 1996 to August 1995, 14 days from July 1995 to August 1994, 128 days from July 1994 to August 1993, 42 days from July 1993 to March 1993.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the none of years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has not

been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 5 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 5 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he service the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 5 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in *Rajasthan State Ganganagar Mills Ltd.* [2004 (103) FLR 192] and *Essen Deinki* [2003 SC (L&S) 113]. Also see *Municipal Corporation, Faridabad* [2004 (8) SCC 195] and *Reserve Bank of India* [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the

management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 24.10.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

का०आ० 268.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देहली कैंट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 83/1999) प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-14012/57/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 268.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 83/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt., New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No.L-14012/57/98-IR(DU)]

P.K. VENUGOPAL, Section Officer

## ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, DELHI**

**I.D. No. 83/1999**

Shri Meva Lal,  
C/o Sh. M.A. Khan, 5/385  
Trilokpuri, Delhi-110091.

.....Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10

.....Management

## AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Meva Lal, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, vide order No. L-14012/57/98-IR(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi, Cantt., in terminating services of Shri Meva Lal S/o Shri Ram Charan is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Meva Lal, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of August '1987. He had worked for the Officer Commanding in godown or storage or as watchman for about 6 years. He rendered duties from 8 a.m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders at least 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW1/1 as evidence. He faced rigors of cross examination also. Col. Konical Satish Kumar tendered his affidavit Ex. MW1/1 as evidence. he also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant

seeking production of muster rolls. The application was disposed off vide order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention,



he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 01.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs

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11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the country of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer (2002 (3) SSC 25). Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of



the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services.

Fiction under section 25-B of the Act will operate if workman has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* (1985 (2) LLJ 539), wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* (1981 (1) LJ 308) was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* (1986 (1) LLJ 34). Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in August 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the

date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from August 97 to September 96, August 96 to September 95, August 95 to September 94, August 94 to September 93 and so on. On careful examination of the attendance registers, it came to light that Shri Meva Lal served for 90 days from August 1997 to September, 1996, 172 days from August 1996 to September 1995, 171 days from August 1995 to September 1994, 183 days from August 1994 to September, 1993, and 197 days from August 1993 to September 1992, 144 days from August 1992 to September 1991, 153 days from August 1991 to September 1990, 180 days from August 1990 to September 1989, 179 days from August 1989 to September 1988, 119 days from August 1988 to September 1987 and 85 days from August 1987 to February 1987.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from August 1993 to September 1992, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service of 240 days to avail benefit of provisions of section 25F of the Act.

21. It is not the case that the claimant reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that he was employed for a fixed term of contract and his services came to an end on non-renewal of contract of employment. It was not asserted that his services were terminated on the ground of continued ill-health. Neither services of the claimant were done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(oo) of the Act. Thus it is obvious that termination of services of the claimant, for any other reason, amounts to retrenchment, as defined by clause (oo) of section 2 of the Act.

22. The claimant had rendered continuous service for a period of one year, as contemplated by section 25-B of the Act. According to him, retrenchment compensation was not paid, which fact was not dispelled by the management. The management was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists* (1964 (1) LLJ 351), *Adaishwar Laal* (1970 Lab.I.C. 936) and *B.M. Gupta* (1979 (1) LLJ 168) announce that subsequent payment of compensation can not validate an invalid order of retrenchment.

23. Claimant deposed that his services were terminated by the management on 31.10.1997 without any

notice. He further declares that his earned wages for a period of two months were not paid. Out of facts unfolded by the claimant, it stand crystallized that neither notice nor pay in lieu there of nor retrenchment compensation was paid to him by the management. Therefore, his retrenchment is violative of the provisions of section 25-F of the Act.

24. Services of the workman were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

25. In *Uma Devi* [2006 (4) SCC I] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workman to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus:

"With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in *Piara Singh* [1992 (4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent."

26. In *P. Chandra Shekhara Rao and Others* [2006 (7) SCC 488] the Apex Court referred *Uma Devi's Case* (Supra) with approval. It also relied the decision in *Uma Rani*

[2004(7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In *Somveer Singh* [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In *Indian Drugs & Pharmaceuticals Ltd.* [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

27. In *Uma Devi* (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job."

28. The claimant was engaged by the management dehors the recruitment rules. No evidence has been brought over the record to project that the management engaged him through employment exchange or an open recruitment process. There is complete vacuum of evidence to the effect that the process through which the claimant was engaged by the management was made known to public at large, so that other eligible candidates may offer their candidature for recruitment. Evidently, it was a back-door entry in service. His engagement by the management was not in consonance with the statutory rules. In view of his wrongful employment, there is no justification for his reinstatement in the service of the management. In the alternative, this Tribunal has to award compensation to the workman in lieu of his reinstatement.

29. No definite yardstick for measuring the quantum of compensation is available. In *S.S. Shetty* [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing



compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by Industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con."

30. A Divisional Bench of the Patna High Court in *B. Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur* (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* (1989 Lab.I.C. 1887).

31. In *Assam Oil Co. Ltd.* [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In *Utkal Machinery Ltd.* [1966(1)LLJ 398] the amount of compensation equivalent to two year salary of the

employee awarded by the Industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In *A.K. Roy* [1970(1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *Anil Kumar Chakaraborty* [1962 (II) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P. Bhandari* [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M.K. Aggarwal* (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In *Yashveer Singh* (1993 Lb.I.C.44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In *Naval Kishor* [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Sant Raj* [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Chandu Lal* (1985 Lab.I.C.1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In *Ras Bihari* (1988 Lab.I.C.107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In *V.V. Rao* (1991 Lab.I.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

32. Claimant rendered one year continuous service to the management, besides other spells which fell sort of 240 days. He was young man, when he was engaged by the management. Now, he had crossed maxima of age, required for recruitment in Government service. He had to contest the case for a period of more than 15 years to seek redressal of his grievances. Keeping in view these facts, I am of the view that an amount of Rs. 30,000.00 as compensation in lieu of reinstatement in service, besides a sum of Rs. 25,000.00 as cost of proceedings would be sufficient to meet the ends of justice. Accordingly the management is commanded to pay compensation to the claimant as quantified above, in lieu of reinstatement of his services, besides cost of proceedings, referred above. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 24.10.2013

Dr. R.K. YADAV, Presiding Officer



नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 269.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग दिल्ली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 82/1999) प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-14012/56/98-आईआर(डीयू)]  
पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 269.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 82/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[No. L-14012/56/98-IR(DU)]  
P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO.1, DELHI**

I.D. No. 82/1999

Shri Brahm Dev Yadav,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

#### Versus

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt, New Delhi-10.

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time, Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer

Commanding, instead of granting temporary status, terminated services of Shri Brahm Dev Yadav, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/56/98/IR(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of the management of the Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Brahm Dev Yadav S/o Shri Ram Chander Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Brahm Dev Yadav, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of June 1990. He had worked for the Officer Commanding in godown or storage or as watchman for about 8 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October, 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross-examination also. Col. Konical Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross-examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides

disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off vide order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which

they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively."

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October, 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,

- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll, and
- (g) Documents of historical and archival value.

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water Account from 01.04.1989 to 31.03.1994. Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989, IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to

31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non-production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplus age in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a

punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health."

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

- (v) The notice is also given to the appropriate Government.

16. For seeking protection under Section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout of cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year."

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if



workmen has actually worked for 240 days in a calendar. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May, 1983 to December, 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in September, 1997. Therefore, for reckoning

continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from September, 1997 to October, 1996, September, 1996 to October, 1995, September, 1995 to October, 1994, September, 1994 to October, 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Brahm Dev Yadav served for 22 days from September 1997 to October 1996, 89 days from September 1996 to October 1995, 16 days from September 1995 to October 1994, 137 days from September 1994 to October 1993, 105 days from September, 1993 to October 1992, 123 days from September 1992 to October 1991, 77 days from September 1991 to October 1990 and 43 days from September, 1990 to June 1990.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service of 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 8 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 8 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 8 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the

claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan State Ganganagar Mills Ltd. [2004 (103) FLR 192] and Essen Deinki [2003 SC(L&S) 113]. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated: 24.10.2013

नई दिल्ली, 31 दिसम्बर, 2013

का०आ० 270.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग दिल्ली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 81/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-14012/53/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 270.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 81/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-14012/53/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DELHI

#### I.D. No. 81/1999

Shri Uday Raj-I,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091

...Workman

#### Versus

The Officer Commanding,  
226, COY, ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer

Commanding, instead of granting temporary status, terminated services of Shri Uday Raj-I, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, vide order No. L-14012/53/98/IR/(DU), New Delhi, dated 09.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Uday Raj-I S/o Shri Kedar Nath is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Uday Raj-I, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of April' 93. He had worked for the Officer Commanding in godown or storage or as watchman for about 5 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government vide office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was

answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off vide order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation



shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,

(e) Financial documents (to be retained for 10 years),

(f) Regiment long roll and

(g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for Cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts



from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer (2002 (3) SSC 25). Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary

action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. (1979 (I) LLJ 1) and Mahabir (1979 (II) LLJ 363).

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* (1970 (2) LLJ 306), Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The

explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* (1985 (2) LLJ 539), wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* (1981 (1) LJ 308) was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* (1986 (1) LLJ 34). Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in August 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the

date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from August 1997 to September 1996, August 1996 to September 1995, August 1995 to September 1994, August 1994 to September 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Uday Raj-I, served for 107 days from August 1997 to September, 1996, 162 days from August 1996 to September 1995, 49 days from August 1995 to September 1994, 171 days from August 1994 to September, 1993, and 77 days from August 1993 to April 1993.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 5 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 5 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Court/Tribunals to require a party to prove facts admitted, otherwise then by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 5 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination.

Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan Sate Ganganagar Mills Ltd [2004 (103) FLR 192] and Essen Deinki [2003 SC (L&S) 113]. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 24.10.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

का०आ० 271.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग देल्ही कान्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट

(संदर्भ संख्या 80/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-14012/58/98-आईआर(डीयू)]  
पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 271.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 80/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-14012/58/98-IR(DU)]  
P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL NO. 1, DELHI**

#### I.D. No. 80/1999

Shri Kailash Yadav,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Kailash Yadav, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for

adjudication, *vide* order No. L-14012/58/98/IR(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Kailash Yadav, is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Kailash Yadav, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of June 1987. He had worked for the Officer Commanding in godown or storage or as watchman for about 10 years. He rendered duties from 8 a. m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:



"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off vide order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the

management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with

effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994. Payment Voucher RIS Accounts from 01.03.1993 to 01.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE canteen account from 01.07.1977 to 30.03.1992 IAFA 175 Receipt for Cash/Cheque Public Fund from 10.4.1963 to November 1985, Labour Imprest accounts—Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood

destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

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"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the

employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* (1979 (I) LLJ 1) and *Mahabir* (1979 (II) LLJ 363).

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- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of

sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* (1970 (2) LLJ 306), Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid.



The Apex Court was confronted with such a proposition in *American Express Banking* (1985 (2) LLJ 539), wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* (1981 (1) LJ 308) was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* (1986 (1) LLJ 34). Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in August 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from August 97 to September 96, August 96 to September 95, August 95 to September 94, August 94 to September 93 and so on. On careful examination of the attendance registers, it came to light that Shri Kailash Yadav served for 46 days from August 1997 to September 1996, 79 days from August 1996 to September 1995, 38 days from August 1995 to September 1994, 164 days from August 1994 to September 1993 and 152 days from August 1993 to September 1992, 99 days

from August 1992 to September 1991, 118 days from August 1991 to September 1990, 172 from August 1990 to September 1989, 121 days from August 1989 to September 1988, 110 days from August 1988 to September 1987 and 99 days from August 1987 to January 1987.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has not been able to project that he rendered continuous service of 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 10 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 10 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 10 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in *Rajasthan State Ganganagar Mills Ltd.* (2004 (103) FLR 192) and *Essen Deinki* (2003 SC (L&S) 113). Also see *Municipal*



Corporation, Faridabad (2004 (8) SCC 195) and Reserve Bank of India (2005 (5) SCC 100).

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to protect that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 25.10.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 272.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कर्माडिंग दिल्ली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 79/1999) प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-42012/52/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 272.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 79/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-14012/52/98-IR(DU)]

P. K. VANUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, DELHI**

I.D. No. 79/1999

Shri Ram Vilas Yadav,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

...Workman

Versus

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Ram Vilas Yadav, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-14012/52/98/IR/(DU), New Delhi, dated 01.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Ram Vilas Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Ram Vilas Yadav, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of June 1992. He had worked for the Officer Commanding in godown or storage or as watchman for about 6 years. He rendered duties from 8 a.m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year

preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to

31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment M/s. M/S Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt for cash CSE canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents,

are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the country of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer (2002 (3) SSC 25). Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down

that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. (1979 (I) LLJ 1) and Mahabir (1979 (II) LLJ 363).

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2)



furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* (1970 (2) LLJ 306), Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking* (1985 (2) LLJ 539), wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied

contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* (1981 (1) LJ 308) was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* (1986 (1) LLJ 34). Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in July 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from July 1997 to September 1996, July 1996 to July 1995, August 1995 to September 1994, August 1994 to July 1993 and so on. On careful examination of the attendance registers, it came to light that Ram Vilas Yadav served for 63 days from July 1997 to August 1996, 26 days from July 1996 to August 1995, 23 days from July 1995 to August 1994, 98 days from July 1994 to August 1993 and 34 days from July 1993 to April 1993.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none the year he reaches notional figure of 240 days, to claim continuous service for a period of one year.

Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 6 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 6 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Court/Tribunals to require a party to prove facts admitted, otherwise by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 6 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in *Rajasthan Sate Ganganagar Mills Ltd* (2004 (103) FLR 192 and *Essen Deinki* (2003 SC (L&S) 113). Also see *municipal Corporation, Faridabad* (2004 (8) SCC 195) and *Reserve Bank of India* (2005 (5) SCC 100).

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the

management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months' notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 24.10.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 273.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग दिल्ली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं०-1 के पंचाट (संदर्भ संख्या 77/1999) प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं० एल-42012/51/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 273.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 77/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/2013.

[No. L-42012/51/98-IR(DU)]

P. K. VANUGOPAL, Section Officer

**ANNEXURE****BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, DELHI**

I.D. No. 77 of 1999

Shri Shiv Kumar Yadav,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091.

....Workman

Versus

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-110010.

...Management

**AWARD**

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C), dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Ashok Kumar Yadav, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-42012/51/98/IR(DU), New Delhi, dated 09.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Shiv Kumar Yadav, S/o Shri Ram Sakal Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Shiv Kumar Yadav, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of April 1992. He had worked for the Officer Commanding in godown or storage or as watchman for about 6 years. He rendered duties from 8 a.m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the mangement, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no

relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C), dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross-examination also. Col. Konikal Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross-examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the clendar years, when he worked with the management. For sake of convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the



claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying therein that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983—1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from

Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC, has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund Account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soad Water Account from 01.04.1989 to 31.03.1994. Payment Voucher RIS Accounts from 01.03.1993 to 31.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment—M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for Cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt of cash CSE



canteen account from 01.07.1977 to 30.03.1992, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (Red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592—596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non-production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer [2002 (3) SSC 25]. Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes

Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the

workman has been paid in lieu of such notice the wages for the period.

- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the

test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments

were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On examination of aforesaid registers, it came to light that the claimant last served the management in August 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from August 1997 to September 1996, August 1996 to September 1995, August 1995 to August 1994, August 1994 to September 1993 and so on. On careful examination of the attendance registers, it came to light that Shri Shiv Kumar Yadav served for 110 days from August 1997 to September 1996, 115 days from August 1996 to September 1995, 43 days from August 1995 to September 1994, 150 days from August 1994 to September 1993, 133 days from August 1993 to September 1992, 69 days from August 1992 to September 1991.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 6 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 6 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 6 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of

continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in Rajasthan State Ganganagar Mills Ltd. [2004 (103) FLR 192] and Essen Deinki [2003 SC (L&S) 113]. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one month's notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 24.10.2013

Dr. R.K. YADAV, Presiding Officer



नई दिल्ली, 31 दिसम्बर, 2013

**का०आ० 274.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑफिसर कमांडिंग दिल्ली कैंट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं-1 के पंचाट (संदर्भ संख्या 78/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं एल-42012/50/98-आईआर(डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st December, 2013

**S.O. 274.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 78/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Officer Commanding, Delhi Cantt, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L-42012/50/98-IR(DU)]

P. K. VANUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DELHI

##### I.D. No. 78/1999

Shri Suresh Yadav,  
C/o Sh. M.A. Khan, 5/385,  
Trilokpuri, Delhi-110091

...Workman

*Versus*

The Officer Commanding,  
226, COY ASC (SUP) Type G,  
Delhi Cantt., New Delhi-10.

...Management

#### AWARD

Casual labours were engaged by the Officer Commanding, 226, COY, Army Supply Corps, Delhi Cantt., New Delhi, from time to time. Casual labour, who rendered atleast 240 days (206 days in the case of offices observing five day week), is to be granted temporary status in view of office memorandum No. 49014/2/86-Estt(C) dated 07.06.1988. Subsequently, a scheme for grant of temporary status was formulated, which is known as 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993'. When Officer Commanding, instead of granting temporary status, terminated services of Shri Suresh Yadav, engaged as a casual labour, he raised an industrial dispute before the Conciliation Officer. Commanding Officer contested his claim, as such conciliation proceedings failed. On

submission of failure report, the appropriate Government formed an opinion that an industrial dispute was in existence and referred that dispute to this Tribunal for adjudication, *vide* order No. L-42012/50/98/IR(DU), New Delhi, dated 9.03.1999, with following terms:

"Whether action of Officer Commanding, 226, COY ASC (Sup.), Type G, Delhi Cantt., in terminating services of Shri Suresh Yadav is legal and justified? If not, to what relief the workman is entitled?"

2. Claim statement was filed by Shri Suresh Yadav, pleading therein that he was engaged as a casual labour by Officer Commanding in the month of March 1993. He had worked for the Officer Commanding in godown or storage or as watchman for about 5 years. He rendered duties from 8 a.m. to 5 p.m. He made a demand for regularization of his services. Instead of regularizing his services, his services were dispensed with on 31.10.1997 orally, without giving any notice or pay in lieu thereof and retrenchment compensation. His wages for the month of September and October 1997 were also not paid. He claimed reinstatement in service of the management, with continuity and full back wages.

3. Claim was demurred by and on behalf of the Commanding Officer, pleading that there existed no relationship of employer and employee between the parties. However, it has been claimed that the claimant was engaged as a casual labour. Guidelines for recruitment of persons on daily wage basis were issued by Central Government *vide* office memorandum No. 49014/2/86-Estt.(C) dated 07.06.1988, which are being followed. Temporary status would be conferred on a casual labour when he renders atleast 240 days (206 days in case of offices observing five day week) continuous service in a calendar year. Since the claimant had not rendered continuous service of 240 days in any calendar year, he was not entitled for grant of temporary status. It was claimed that his claim statement may be dismissed, being devoid of merits.

4. Claimant tenders his affidavit Ex. WW 1/1 as evidence. He faced rigors of cross examination also. Col. Konical Satish Kumar tendered his affidavit Ex. MW 1/1 as evidence. He also faced rigors of cross examination. No other witness was examined by either of the parties.

5. After hearing the parties, an award dated 07.05.2004 was handed down by the Tribunal on the strength of which dispute raised by the claimant, besides disputes of 39 other workmen of his category, was answered against him. The award was assailed before the High Court of Delhi by way of writ petition, which came to be disposed off on 10.05.2013. The High Court remanded the matter back to this Tribunal for adjudication on the issue as to whether the claimant had rendered continuous service of 240 days in or any of the calendar years, when he worked with the management. For sake of



convenience, the order passed by the High Court of is reproduced thus:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioner herein to ascertain whether or not they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with section 25-B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same.

It is made clear that no other issue shall be permitted to be raised by either of the parties.

The impugned Award is set aside to the aforesaid extent only and the CGIT shall, after recording its findings in respect of each of the 35 petitioners, proceed to pass consequential orders."

6. When matter was taken up for consideration by the Tribunal, after its remittance by the High Court, an application was moved by and on behalf of the claimant seeking production of muster rolls. The application was disposed off *vide* order dated 05.08.2013, directing the management to produce muster rolls in respect of the claimant before the Tribunal. For convenience, said order is reproduced thus:

"Shri Saini moves an application praying there in that the respondent may be directed to produce muster rolls pertaining to the claimant. Notice of the application is given to Shri Tyagi, who had replied the application orally. I have gone through the order dated 10.05.2013 passed by the High Court of Delhi, wherein following directions were issued:

"In the light of the aforesaid dispute, I am inclined to remand the reference back to the CGIT concerned only for the limited purpose of examining the records of the respondent in respect of each of the 35 petitioners herein to ascertain whether, or not, they or any of them had served for 240 days either in the year preceding their termination, or in any of the years during which they served the respondent. The said computation shall be made in accordance with Section 25B of the Act.

For the said purpose, the respondent shall produce its records for scrutiny by the Labour Court and the petitioner shall also be entitled to inspection of the same."

In the light of the above orders passed by the High Court of Delhi, it is expedient to announce that the management is under an obligation to produce records relating to attendance of the claimants while in service of the respondent, including muster rolls. Resultantly, application is granted. Management shall produce muster rolls in respect of the claimants on the next date of hearing positively".

7. Instead of producing muster rolls, management moved an application seeking exemption from filing the muster rolls for the year 1983-1998, claiming that the same stood destroyed. The management projected that the muster rolls are no more in their possession, since it has been destroyed. On account of destruction of muster rolls, it cannot be produced, pursuant to order dated 5.8.2013, pleads the management. Attendance registers have been produced, claims the management.

8. Arguments were heard at the bar. Shri Sudeep Raj Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Brij Bhushan Tyagi, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. At the outset, Shri Tyagi argued that muster rolls have been destroyed pursuant to decision taken by Board of Officers in October 2011. In support of his contention, he had filed photocopies of the documents relating to meetings of Board of Officers, wherein decision for destruction of the documents was taken and the documents were destroyed by way of burning. Certificate from Commandant, 226 Company ASC, has been annexed wherein it has been certified that the documents/files mentioned in Board's proceedings were not required as per para 592 of Regulation for the Army, 1987 and were recommended for destruction. A declaration to that effect was issued by the Commandant wherein he has declared that the documents, which were to be destroyed, do not contain any paper on following subjects:

- (a) Papers containing decision on important matters of departmental policy,
- (b) Maps and plans relating to operation,
- (c) Office Orders,
- (d) War diaries,
- (e) Financial documents (to be retained for 10 years),
- (f) Regiment long roll and
- (g) Documents of historical and archival value

10. Certificate issued by the Board of Officers, counter signed by the Commandant, 226 Company ASC,

has also been annexed. It has been certified therein that old records have been destroyed by way of burning with effect from 15.10.2011 and subsequent dates. Records, which have been burnt, pertain to Payment VR Supply & Services from 01.02.1971 to 31.12.2000, Payment Vouchers of Regiment from 01.01.1998 to 31.12.1998, Payment Voucher Regiment Fund Account from 12.08.1970 to 30.07.2001, Black Cheque Regiment Fund account from 01.04.1976 to 31.03.1992, Red Cheque from 01.04.1973 to 31.03.1992, Payment Voucher CSE from 01.04.1990 to 31.03.2001, Receipt Voucher CSD Canteen from 01.04.1997 to 31.03.2001, CSD Canteen Account Columnar Cash Book from 01.08.1971 to 31.05.1984, Red Cheque from 01.04.1969 to 31.03.1992, FD Imprest Account 01.09.1984 to 31.08.2001, Payment Voucher File FD Imprest from 01.01.1984 to 31.03.1992, Payment Voucher Public Fund Accounts from 01.08.1990 to 31.03.1998, Payment Voucher JCO Mess 01.04.1994 to 31.03.1999, Receipt Voucher JCO Mess from 01.04.1995 to 31.03.2001, Receipt Voucher LPG Account from 01.07.1990 to 31.03.1998, Payment Voucher Soda Water Account from 01.06.1997 to 31.12.2001, Receipt Voucher Soda Water account from 01.04.1989 to 31.03.1994, Payment Voucher RIS Accounts from 01.03.1993 to 01.03.2001, Payment Voucher LPG Payment Accounts from 01.02.1999 to 30.04.2001, Quarterly Surprise Check Correspondence from 01.10.1988 to 30.06.1989, Postage Service Level Correspondence from 01.04.1975 to 31.07.1989, Correspondence Files from 01.03.1991 to 31.05.1992, 90% payment M/s. MS Oberoi & Bros from 01.02.1980 to 15.05.1987, Handling/Taking Over Correspondence from 15.09.1983 to 30.06.1989, Pay and Allowance JCOs Correspondence from 21.08.1990 to 15.04.1992, ETG Correspondence from 01.04.1975 to 05.09.1989 IAFA 175 Receipt for cash/Cheque Regiment Account from 01.01.1962 to 30.03.1977, IAFA 175 Receipt for Cash/Cheque Public Fund from 10.04.1963 to November 1985, Labour Imprest accounts - Cash Book from 01.12.1965 to 01.07.1970, Public Fund Account Columnar Cash Book from 01.03.1956 to 30.09.1984, Regiment Fund Account Columnar Cash Book from 12.08.1970 to 18.01.1986, CSE Canteen Account Columnar Cash Book 01.08.1971 to 31.05.1984, IAFA—Black Cheque from 01.04.1978 to 31.03.1991, IAFA—Red Cheque 01.01.1977 to 31.03.1991, IAFA 176 Black Cheque FD Imprest Account from 01.04.1972 to 31.03.1992, IAFA 177—Red Cheque FD Imp Account from 01.04.1972 to 31.03.1992, IAFA 176 Black Cheque Public Fund Accounts from 01.04.1971 to 31.03.1992 and IAFA 177 (red Cheque) Public Fund Accounts from 01.04.1971 to 31.03.1992.

11. During the course of arguments Shri Saini opted not to comment anything on the proposition as to whether above records were destroyed or not. It came to light that the claimant has nothing to say that the above records were destroyed by the management. When claimant does not question the fact that the above records stood

destroyed, facts emerging out of above certificate, issued by the Board of Officers and counter signed by the Commandant, are to be accepted. Resultantly, it is concluded that above records were destroyed by the management.

12. A claim has been made by the management that muster rolls were records of payment and hence kept as payment vouchers. Muster rolls, being financial documents, are to be retained for a period of ten years only. Shri Tyagi presents that muster rolls, for the periods for which the claimant worked with the management, were more than ten years old in October 2011, hence were destroyed as per para 592-596 of Regulation for the Army. Shri Saini opted not to raise an eyebrow on the proposition that the muster rolls, kept as payment vouchers, were destroyed. Thus it is clear that the claimant has nothing to say on the count of destruction of muster rolls by the management. Therefore, it is crystal clear that the management had destroyed muster rolls in October 2011 and as such, rightly seeks exemption from filing those documents for consideration of this Tribunal. Mere non production of muster rolls for a particular period per se without any plea of suppression by the claimant will not be a ground for the Tribunal to draw an adverse inference against the management, as held by the Apex Court in Range Forest Officer (2002 (3) SSC 25). Since non-production of muster rolls was on account of destruction of the records, no case has been shown to the effect that adverse inference may be drawn against the management.

13. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the

contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

- (c) termination of the services of a workman on the ground of continued ill-health".

14. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

15. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

16. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B

of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

17. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in a industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

18. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid.



The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539]22, wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

19. The Tribunal has been saddled with a responsibility to scrutinize the records of the management to ascertain as to whether the claimant had rendered continuous service of 240 days in any calendar year. Pursuant to the directions, the management had filed attendance registers from May 1983 to December 1998, wherein attendance of the claimant has been recorded. Attendance recorded in the registers have been checked and verified by the Officer Commanding, who had given certificate that the attendance recorded in the registers were verified with the muster rolls and thereafter payments were released in favour of the casual workers. Registers, so produced, are documents which the Tribunal is supposed to examine in the light of missives given by the High Court of Delhi. On careful examination of aforesaid registers, it came to light that the claimant last served the management in August 1997. Therefore, for reckoning continuous service for the period of 240 days in preceding 12 months from the date when services of the claimant were dispensed with, the Tribunal had to count service rendered by the claimant from August 97 to September 96, August, 96 to September 95, August 95 to September 94, August 94 to September 93 and so on. On careful examination of the attendance registers, it came to light that Shri Suresh Yadav, served for 112 days from August 1997 to September 1996, 43 days from August 1996 to September 1995, 43 days from August 1995 to September 1994, 139 days from August 1994 to September 1993, 70 days from August 1993 to April, 1993.

20. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, he reaches notional figure of 240 days to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has been able to project that he rendered continuous service to 240 days to avail benefit of provisions of section 25F of the Act.

21. In the claim statement, it has been pleaded that the claimant continuously worked for a period of 5 years, with the management. At the outset the management denied that the claimant was engaged at all in service. But in the subsequent breath, it was pleaded that he was engaged as a casual employee at intermittent periods. However, no specific denial was made to the effect that the claimant had not rendered continuous service for a period of 5 years as claimed by him. Evasive reply given by the management was not taken as admission of fact by the Tribunal.

22. It is a settled proposition of law that facts admitted by a party need not be proved. However, there is discretion available to Courts/Tribunals to require a party to prove facts admitted, otherwise than by such admission. While using that discretion, the Tribunal called upon the claimant to enter the witness box, to establish that he rendered continuous service for a period of 240 days in a calendar year or every year in which he served the management. During the course of testimony, the claimant made a bald assertion to the effect that he continuously served the management for a period of 5 years. No document such as salary slip or wage receipt or any record or order issued by the management was brought over the record to substantiate the factum of continuous service of 240 days in a calendar year, not to talk of continuous service of ten years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge the burden resting on him. Burden to prove that he had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, he had to lead cogent evidence to show that he had in fact worked for 240 days in a year preceding his termination. Mere filing of affidavit or by giving his own statement, was found not to be enough by the Apex Court, to prove factum that he had worked with the management for 240 days, in *Rajasthan State Ganganagar Mills Ltd* [2004 (103) FLR 192] and *Essen Deinki* [2003 SC (L&S) 113]. Also see *Municipal Corporation, Faridabad* [2004 (8) SCC 195] and *reserve Bank of India* [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that he worked for 240 days in a calendar with the management. To discharge that onus, apart from oral



evidence, claimant had not produced any evidence to prove the fact that he had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that he had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance registers, produced by the management before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that he had rendered continuous service of 240 days in any calendar year, to entitle him for protection of section 25F of the Act.

24. Since case of the claimant does not fall within the four corners of the provisions of section 25-F of the Act, protection laid therein does not come for his rescue. He cannot claim that one months notice or pay in lieu thereof would have been given before termination of his service. Right to claim retrenchment compensation has also not accrued in his favour. No evidence was brought forward by the claimant to project that a person junior to him was retained, when his services were dispensed with. He also could not highlight that after termination of his service, management employed some other person in the category in which he was employed. Therefore, provisions of section 25-G and 25-H of the Act have no application.

25. In view of the reasons detailed above, it is concluded that action of the management in terminating services of the claimant is in consonance with provisions of the Act. No illegality or unjustifiability has been brought over the record. Claimant is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 25.10.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 3 जनवरी, 2014

**का०आ० 275.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (3/2011) प्रकाशित करती है जो केन्द्रीय सरकार को 01.01.2014 को प्राप्त हुआ था।

[सं एल-12011/43/2010-आईआर(बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 3rd January, 2014

**S.O. 275.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 3/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the management of Indian Bank and their

workmen, received by the Central Government on 01/01/2014.

[No. L-12011/43/2010-IR (B-II)]

RAVI KUMAR, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 19th November, 2013

**Present:** K.P. PRASANNA KUMARI, Presiding Officer

#### Industrial Dispute No. 3 of 2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their workman)

#### BETWEEN

The General Secretary : 1st Party/Petitioner Union  
Indian Bank Employees'  
Association  
No. 17, Ameerjan Street  
Choolaimedu,  
Chennai-600094

#### AND

The General Manager/HR : 2nd Party/Respondent  
Indian Bank Head Office  
No. 66, Rajaji Salai,  
Chennai-600001

#### Appearance:

For the 1st Party/Petitioner : M/s V. Ajoy Khose,  
Union S. Manogaran, Advocates  
For the 2nd Party/ : M/s T.S. Gopalan &  
Management Co., Advocates

#### AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/43/2010-IR (B-II), dated 09.12.2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Indian Bank, Chennai in imposing the punishment of Compulsory Retirement from services upon Sri S. Ezhumalai, an ex-Sub-Staff of the Thirupukuzhi Branch, Kancheepuram Circle is legal and justified? What relief the workman is entitled to?

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID 3/2011 and issued notices

to both sides. The First Party has entered appearance through its Authorized Representative and the Second Party through its counsel and filed their claim and counter statement respectively.

3. The averments in the Claim Petition in brief are these:

The First Party is a Union registered under the Trade Union Act and has substantial following among the workmen in the Second Party Bank. It takes up genuine grievances of its members who are working in the Second Party Bank. Ezhumalai, a member of the First Party was working as Sub-Staff in Thiruppukuzhi branch of the Second Party. He was honest and sincere in work. The Second Party had issued Show Cause Notice to Ezhumalai on 20.11.2006. In the Show Cause Notice it was alleged that he had committed irregularity relating to withdrawal of Rs. 5,700/- from the SB Account in the name of one Janakiraman. A cheque dated 07.07.2006 favouring one Kumar for Rs. 5,700/- was presented at the bank on 07.07.2006 and payment was obtained. The Show Cause Notice stated that Ezhumalai had issued token to the payee and informed both the Cashier who debited the cheque and the Passing Officer that the payee was known to him and accordingly the instrument was handled for debiting the SB Account and for passing for cash payment. Subsequently, it is said to have been noticed that the account holder had not issued the cheque at all. Elumalai, the Sub-Staff was alleged to have committed misconduct as per the Memorandum of Settlement in between the Second Party Bank and the Employees. In fact the bearer of the cheque has presented it for payment. Ezhumalai, the concerned worker has handed over the cheque to the Cashier for debiting the instrument. The Passing Officer passed the instrument after verifying the signature. The concerned worker has not committed any misconduct. On the basis of charge framed against the concerned worker, a domestic enquiry was conducted. The Enquiry Officer has found him guilty of the charge. The Disciplinary Authority, by its letter dated 06.09.2007 has imposed the major punishment of Compulsory Retirement on the concerned worker. The punishment is not justified in the absence of any misconduct on the part of the concerned worker. The Respondent shall be directed to reinstate him with back wages and other benefits.

4. The Respondent has filed Counter Statement contending as follows:

The concerned workman, Ezhumalai was working as Sub-Staff in Thiruppukuzhi Branch of the Second Party Bank. On 07.07.2006 by 01.20 PM, one V. Kumar had presented a cheque for Rs. 5,700/- drawn on the

account of Janakiraman. The concerned workman had issued token to the person who presented the cheque. He has told the counter clerk and the Cheque Passing Officer that the payee was a mechanic. Based on this identification the Counter Clerk has made entry in the relevant account and the Passing Officer has passed the instrument without verifying the signature. The person who was identified by the concerned workman collected the amount as per the cheque. Sometime later, the Passing Officer grew suspicious. On enquiry he found that a person as named in the cheque did not exist. On further enquiry it was found that the account holder had given the cheque book renewal slip on 30.06.2006, that the cheque book was taken from the staff by the SB Officer on that day and was kept under his control. The account holder had taken delivery of the book only on 05.07.2006. The concerned workman was found to have been in the house of the account holder and asked him to collect the cheque book from the branch. The account holder denied to have given cheque for Rs. 5,700/- favouring V. Kumar. The Vigilance Officer had enquired into the incident and had submitted a report on 08.07.2006. A Show Cause Notice has been issued to the concerned worker regarding the incident. The reply given by him was not satisfactory. Charge Sheet was issued to the concerned workman and a domestic enquiry was conducted into the charges framed against him. On the basis of the enquiry report, the punishment of Compulsory Retirement from service was imposed on the concerned worker. The First Party is not entitled to any relief.

5. After the Second Party has filed counter statement, the First Party has filed rejoinder which is mostly a repetition of the Claim Statement.

6. The evidence in the case consist of the documents marked as Exs. W1 to Ex. W17 and Exs. M1 to Ex. M33. No oral evidence was adduced by either side.

#### 7. The Points for consideration are:

- (i) Whether the Second Party is justified in imposing the punishment of compulsory Retirement from service on Ezhumalai, the concerned Sub-Staff?
- (ii) What is the relief if any to which the workman is entitled?

#### The Points

8. Ezhumalai, the concerned worker was admittedly working as Sub-Staff in Thiruppukuzhi branch of the Second Party on 07.07.2006, the date of the alleged incident resulting in the imposing of punishment of Compulsory retirement on him. On this date, admittedly, one V. Kumar had presented a cheque for Rs. 5,700/-

drawn on the SB Account of one S. Janakiraman. Ezhumalai, the concerned worker had admittedly issued token to the person who presented the cheque. The Counter Clerk had debited the cheque and the Passing Officer had passed the cheque for payment also. After the payee had left the bank, the Counter Clerk felt suspicious, informed the Passing Officer about the suspicion on the cheque and made enquiry about the payee. The payee could not be traced. On enquiry with Janakiraman, the account holder, it was revealed that he had not issued any cheque in favour of one Kumar at all. According to the Second Party, the concerned worker is the one who issued token to the person who presented the cheque at the bank. More than this, the concerned worker represented to the Counter Clerk and also the Passing Officer that the payee is a mechanic and is known to him. According to the Second Party it was on the basis of this identification made by the concerned workman the cheque happened to be passed and amount happened to be paid to Kumar without verification of the signature in the cheque. It is alleged that the appraiser of the Bank had seen the concerned worker talking to the payee outside the premises of the Bank also. This has resulted in issuing a Show Cause Notice to the concerned workman, framing a charge against him and holding an enquiry the result of which went against him. The concerned worker was made to retire from service prematurely on the basis of the finding in the domestic enquiry. The First Party had raised an Industrial Dispute against this.

9. There is no contention for the parties that the departmental enquiry was not conducted in a fair and proper manner. Both sides are relying upon the enquiry file mainly, to project their respective cases.

10. The enquiry proceedings is marked as Ex. M9. The first witness in the enquiry proceedings is the Vigilance Officer who had conducted a preliminary enquiry regarding the incident. The report given by this witness is marked as Ex. M21. The Vigilance Officer seems to have questioned the Clerk who had debited the account, the Asstt. Manager who had passed the cheque for payment, the appraiser of the Bank, the Branch Manager and also Janakiraman, the account holder. On the basis of the enquiry, the Vigilance Officer had reported that the needle of suspicion is directed at the concerned worker. In his report he has stated that the account holder had told him that he had not used any of the leaves of the cheque book containing the cheque that was encashed by Kumar. He has further reported that the involvement of the concerned worker is seen in issuing of token and telling the debiting staff and the Passing Official about the payee being a mechanic and a known person. He had also reported that the concerned worker is known to have gone to the place of the account holder and informed about the readiness of the new Cheque Book. He noticed

that the writings in the disputed cheque is different from the two previous cheques encashed by the account holder.

11. In spite of the above report given by the Vigilance Officer on the basis of information said to have been given by the witnesses, what is the evidence given by the same witnesses before the Enquiry Officer? English translation of the evidence of witnesses who had deposed in Tamil had been made available to me. MW2 examined in the enquiry proceedings is the Appraiser who had allegedly noticed the concerned worker in conversation with the payee of the disputed cheque. This witness has stated that on 07.07.2006, when he was entering the bank, he had found the concerned worker talking to a person. He is said to have heard the concerned worker telling the person that he will seem him at his residence. But he does not know if the person to whom the concerned worker was speaking was the payee of the disputed cheque. On reaching inside the Bank, the Manager is said to have asked him about the bearded man who presented the false cheque. He then remembered that the one who was found talking with the concerned worker had a beard.

12. MW3 in the enquiry proceedings is the Assistant Branch Manager. This witness has stated that the concerned worker had told him while passing the referred cheque that he knows the payee of the cheque in question. He also deposed that he had seen the payee talking to the concerned worker after receiving the money. He had got suspicious and brought it to the notice of the Branch Manager. The Branch Manager had called the account holder and he had been told that he did not issue the cheque in question. According to the MW3, he had asked the concerned worker to help him to search for the payee. But the concerned worker had not obliged. He went in search of the payee but he did not succeed in finding him. He further stated that after some 10 minutes the concerned worker had approached him and had told him that the payee will not be traceable, and had agreed to make good the cheque amount himself. He had remitted Rs. 2,000/- on the same day and had agreed to pay the balance amount. On 11.07.2006, he is said to have remitted the entire amount to the account of Sundry Deposit. He stated during his cross-examination that since many customers of the branch are illiterate the concerned worker used to assist them in writing the challans. He then stated that the difference in the signature of the account holder was very minor and was not traceable at the time of passing. He also stated that apart from the cheque in question the concerned worker had taken other 4 or 5 instruments also to the Cashier for debiting on the day. MW5, the Debiting Clerk also deposed that the concerned worker told him that he is known to him.

13. The account holder from whose account the amount was debited was examined as MW4. He stated

that he had given a letter to the Management regarding the incident. This letter is marked as Ex. M18. He has stated in his letter that on 05.07.2006 by 0300 PM he has received the cheque book containing the cheque leaves in which cheque favouring Kumar was drawn. He had stated that he had kept the cheque book in the drawer of his table. He had not used any cheque leaf from the new cheque book. When the Manager had telephoned to him on 07.07.2006, he had verified the cheque book and had found that the third cheque leaf in the cheque book was stolen by someone. During his examination he stated that he was not in the habit of counting the cheque leaves on receiving the cheque book. He had deposited some money for purchase of land. He had withdrawn that amount and had asked the concerned worker if he had any money in the account and then he had withdrawn Rs. 2,000/-.

14. On the basis of the above evidence of the witnesses the Investigating Officer had concluded that the charges against the concerned worker are proved. What is the reasoning given by the Investigating Officer? Referring to the Vigilance Officer he has stated that the account holder had informed the Vigilance Officer that the concerned worker had been to the house of the account holder informing him about the readiness of the cheque book and this is stated in the report of the Vigilance Officer. The Enquiry Officer has reasoned that though this fact is stated in the report of the Vigilance Officer, neither the Vigilance Officer nor the account holder was cross-examined on this aspect. The Enquiry Officer seems to have assumed that the concerned worker had gone to the house of the account holder. It is really surprising that on such an evidence such a conclusion was arrived at by the Enquiry Officer. The account holder concerned was examined in the enquiry proceedings as MW4. I have already referred to his evidence. During his evidence, the account holder does not have a case at all that the concerned worker had ever been to his house. Even in the letter written by him and marked as Ex. M18, there is no case for the account holder that the concerned worker had been to his house. In that case there was no question of the account holder being cross-examined on that aspect. True the Vigilance Officer has stated in his report that the account holder has told him about the visit of the worker to his house. But what is stated in the report of the Vigilance Officer cannot be treated as the basis for the finding when the very account holder does not have such a case before the Enquiry Officer.

15. The Enquiry Officer has stated in his report that the cheque book was collected by the account holder on 05.07.2006. He has then proceeded to state that the numbering of the cheque books are done by the Sub-Staff only. The Enquiry Officer had then assumed that if the concerned worker had not handled the cheque book for numbering it is not possible that he would come to

know about the readiness of the cheque book before his informing the account holder. For one thing, none of the witnesses examined in the enquiry proceedings has stated that the numbering of the cheque books are done by the concerned worker. There is no case even that this work is usually done by any of the Sub-Staff. None of the witnesses has stated that the concerned worker had any opportunity to deal with the cheque book that was kept ready for the account holder before the account holder obtained it on 05.07.2006. The Enquiry Officer had assumed that the concerned worker might have numbered the cheque book and had proceeded to assume that it must have been on the basis of his knowledge he had gone to the house of the account holder. As already stated there is no evidence to show that the concerned worker had been to the house of the account holder. The account holder does not have such a case. It is only based on unacceptable evidence and imagination, the Enquiry Officer has arrived at such a conclusion.

16. The Enquiry Officer had then stated the account holder had informed the Vigilance Officer that he had enquired the concerned worker about the balance amount in his account and then withdrawn Rs. 2,000/- from the account on 06.07.2006. The Enquiry Officer has proceeded to state that when the actual balance amount in the account was more than Rs. 7,000/-, the concerned worker informing him that it is only Rs. 2,000/- is odd. In this respect also the evidence given by the account holder is not in favour of the Management. In Ex.M18 there is no case at all for him that any such enquiry was made by him with the concerned worker. During his examination what he has stated is that after taking the money intended for purchase of land, he had asked the concerned worker how much money is there in his account and had then withdrawn Rs. 2,000/-. He does not have a case that the concerned worker had told him that the balance amount is a lesser amount than Rs. 7,671/- which was the real balance. From his evidence what is to be assumed is that the account holder had enquired with the concerned worker about the balance only to ascertain if he has sufficient amount in deposit to allow him to withdraw Rs. 2,000/-.

17. The Enquiry Officer had then proceeded to state that the style of the signature would have become available to the concerned worker on the previous day when the account holder withdrew Rs. 2,000/- since vouchers would have been handled by him for stitching. According to the Enquiry Officer the concerned worker might have got access to the signature style of the account holder in this manner. The Enquiry Officer seems to have gone beyond any limit in making such assumptions. None of the witnesses have stated that the concerned worker had done the job and had occasion to have access to the signature of the account holder.



18. The Enquiry Officer has then stated that the presenter of the cheque was identified by the concerned worker as a local mechanic and as a known person both to the debiting clerk and to the passing official. The worker was seen talking with a bearded man by the Appraiser. The passing official also had seen the concerned worker talking to the payee. According to the Enquiry Officer if the concerned worker was innocent he would have agreed to the request of the debiting clerk to go in search of the presenter of the cheque. On the other hand, the concerned worker has expressed his readiness to remit the amount. The Enquiry Officer has felt that this conduct of the concerned worker is highly suspicious. According to the Enquiry Officer if actually the concerned worker was innocent, rather than to agreeing to remit the amount, he would have assisted the debiting officer to search and find out the presenter of the cheque. Remittance of the amount would not amount to admission of the crime. At the most it was only an attempt to get out of the unenviable position one is put into.

19. It could be seen that the finding of the Enquiry Officer is entirely based on surmises, assumptions and imaginations. Even assuming the worst what actually is the act done by he concerned worker? The only evidence available against him is that he was found talking with the presenter of the cheque after the presenter had collected the money from the bank. The Appraiser does not know if it was the presenter at all. He merely stated that the concerned worker was found talking with a bearded man. The passing official has stated that he had found the presenter talking to the concerned worker after he collected the amount. Merely on the basis of this can it be assumed that the concerned worker has got anything to do with presenting a cheque that was allegedly stolen from the account holder? Even as admitted by the Officers of the bank token in the case was issued by the concerned worker. He used to help customers in filling the challans and do other odd jobs, MW2 has stated. In that case, what was the harm in the concerned worker talking to the presenter of the cheque? The case of the concerned worker is that the presenter of the cheque has represented himself to be a mechanic. According to him he never stated that he is a person known to him. The evidence given by the debiting clerk and the passing Officer is not very reliable. There is every probability that the representation made by the concerned worker, if any was on the basis of the representation made by the presenter himself.

20. For encashing a bearer cheque identity of the presenter is not relevant at all. What is relevant is the signature in the cheque. Did the Debiting Clerk or the Passing Officer verify the signature of the cheque and compare it to the signature available in the specimen card

and other signatures of the account holder available in the bank? They do not have even a case that they have done so before passing the cheque for payment. Both the Officers have behaved in an irresponsible manner. If the evidence of these two witnesses are taken into account they would pass a cheque based on the assertion of a mere Sub-Staff, without ascertaining the genuineness of the signature. This is not what is expected from the responsible Officers of a banking institution. The very subsistence of the concerned worker, a Sub-Staff who gets meager amount as wages has been put to peril because of the irresponsibility of the Officers. Just because he was found to talk with the person who has withdrawn money based on forged cheque, he is taken to task by the Management. I find that there was no acceptable evidence at all to enter a finding of guilt upon the concerned worker. The finding on mere assumptions and surmises will not stand. The concerned worker is entitled to an order in his favour. The worker is entitled to be reinstated in service.

21. There is no evidence to show that the worker was not gainfully employed after the punishment was imposed on him. I do not find it proper to allow him the entire back wages on reinstatement, but confine it to 50%. The Second Party is directed to reinstate the concerned worker in service within one month with 50% back wages, continuity of service and other attendant benefits.

22. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 19th November, 2013).

K.P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined:

For the 1st Party/Petitioner	:	None
For the 2nd Party/Management	:	None

#### Documents Marked:

##### On the petitioner's side

Ex.No.	Date	Description
Ex.W1	07.07.2006	Letter from Sri Elumalai
Ex.W2	08.07.2006	Letter from Circle Officer, Kancheepuram suspending Sri S. Elumalai, Tiruppukuzhi branch
Ex.W3	08.07.2006	Preliminary Investigation Report
Ex.W4	24.08.2006	Reply letter of Sri S. Elumalai to letter dated 24.07.2006 from Circle Office, Kancheepuram
Ex.W5	20.11.2006	Show Cause Notice Ref: VIG/DPAS/340/2006

Ex.W6	02.12.2006	Reply from Sri S. Elumalai for the above letter	Ex.M8	06.03.2007	Letter by Sri S. Elumalai addressed to the EO to post the enquiry to some other date
Ex.W7	03.01.2007	Charge Sheet Ref: VIG/DPAS/340/2006	Ex.M9	30.04.2007	Enquiry Proceedings
Ex.W8	06.03.2007/ 30.04.2007	Enquiry Proceedings	Ex.M10	18.07.2002	SB Specimen Card for SB No. 10727 of S. Janakiraman
Ex.W9	28.06.2007	Defence brief by Sri L. Ramasamy, Defence Representative	Ex.M11	03.01.2005 to 07.07.2006	Statement of SB Account No. 10727 of S. Janakiraman
Ex.W10	04.07.2007	Enquiry Officer's report	Ex.M12	06.07.2006	Cheque Nos. 195978 & 195977, both dated 06.07.2006
Ex.W11	30.07.2007	Defence Representative's reply to EO Report	Ex.M13	07.07.2006	Cheque No. 938803 dated 07.07.2006
Ex.W12	21.08.2007	Letter from Disciplinary Authority/AGM proposing punishment	Ex.M14	-	Statement by Sri K. Nagarajan, Jewel Appraiser
Ex.W13	06.09.2007	Reply from Sri Elumalai to the above letter	Ex.M15	07.07.2006	Statement by Sri S. Elumalai
Ex.W14	06.09.2007	Letter from the Disciplinary Authority imposing punishment	Ex.M16	-	Statement by Sri T.R. Seshadri
Ex.W15	06.12.2008	Letter from the Union IBEA/GEN/48/2008-10 to the Assistant Labour Commissioner raising industrial Dispute on the above issue	Ex.M17	07.07.2006	Statement by Sri M.V. Satyakumar
			Ex.M18	07.07.2006	Statement by Sri S. Janakiraman
			Ex.M19	11.07.2006	Letter of Tiruppuluzhi Branch addressed to CO
Ex.W16	20.02.2009	Reply from the Management of Indian Bank to the above issue	Ex.M20	07.07.2006	Letter of Tiruppukuzhi Branch to CO
Ex.W17	23.04.2009	Rejoinder IBEA/GEN/88/2008-10 by Indian Bank Employees Association	Ex.21	08.07.2006	Investigation report by Mr. Valmikinathan
<b>On the Management's side</b>			Ex.22	-	Cheque Book issued register
<b>Ex.No.</b>	<b>Date</b>	<b>Description</b>	Ex.M23	July 2006	Attendance Register July 2006
Ex.M1	24.07.2006	Letter by AGM, CO/Kan. Calling for explanation from Sri S. Elumalai	Ex.M24	30.04.2007	Statement by Sri S. Elumalai
Ex.M2	24.08.2006	Sri S. Elumalai's reply to letter dated 24.07.2006	Ex.M25	02.12.2006	Reply by Sri S. Elumalai—Annexure to DEX-1-2
Ex.M3	20.11.2006	Show Cause Notice by AGM/DA to Sri S. Elumalai	Ex.M26	12.05.2007	Presenting Officer's brief
Ex.M4	02.12.2006	Reply to Show Cause Notice by Sri S. Elumalai	Ex.M27	28.06.2007	Defence brief
Ex.M5	03.01.2007	Charge Sheet No. Vig/DPAS/340/06 issued by AGM/DA to Sri Elumalai	Ex.M28	04.07.2007	Enquiry Officer's findings
Ex.M6	20.02.2007	Letter by A. Karunakaran, EO addressed to Sri S. Elumalai—Posting Enquiry on 06.03.2007	Ex.M29	30.07.2007	Comments by CSE on the Enquiry Officer's findings
Ex.M7	06.03.2007	Enquiry proceedings Page 1&2—Proceedings of Preliminary Enquiry	Ex.M30	21.08.2007	Second Show Cause Notice by AGM/DA to Mr. Elumalai—Proposing Punishment
			Ex.M31	06.09.2007	Reply by Sri Elumalai to the Second Show Cause Notice
			Ex.M32	06.09.2007	Personnel hearing proceedings
			Ex.M33	06.09.2007	Punishment Order by AGM/DA to S. Elumalai.

नई दिल्ली, 3 जनवरी, 2014

का०आ० 276.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चैन्नई पोर्ट ट्रस्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई के पंचाट ( 35/2013 ) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/01/2014 को प्राप्त हुआ था।

[सं० एल-33011/4/2012-आईआर(बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 3rd January, 2014

**S.O. 276.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 35/2013) of the Central Government Industrial Tribunal -cum- Labour Court Chennai as shown in the Annexure in the Industrial dispute between the management of Chennai Port Trust and their workman, received by the Central Government on 01/01/2014.

[No. L-33011/4/2012-IR(B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT  
CHENNAI**

Frday, the 13th November, 2013

**Present :** K.P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 35/2013**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Chennai Port Trust and their workman)

**BETWEEN**

The General Secretary, : 1st Party/Petitioner  
The Madras Port Trust  
Railwaymen's Union  
Bhagat House, New  
No. 47, Old No. 204  
Prakasam Salai  
Chennai-600001

**AND**

The Chairman-cum- : 2nd Party/Respondent  
Managing Director M/s.  
Tamil Nadu Minerals Ltd.  
Chennai-600005

**Appearance**

For the 1st Party/Petitioner : M/s. Shanmuga  
Sundarababu, Advocate

For the 2nd Party/  
Management

: M/s S.P. Patel, Advocate

**AWARD**

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-33011/4/2012-IR(B-II) dated 27.02.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Chennai Port Trust in terminating Sri S. Sivasankaran, an ex-Shunting Master from service is legal and justified? What relief the workman is entitled to?"

2. After the receipt of the Industrial Dispute this Tribunal has numberd it as ID 35/2013 and issued notice to both sides. Both sides entered appearance through their respective counsel.

3. The case was being posted for filing Claim Statement repeatedly. In spite of this, the petitioner has not cared to file the Claim Statement. The petitioner as well as his counsel has been absent today also. There was no representation of any kind on his side as well. There is no material for this Tribunal to give a finding in favour of petitioner in the absence of any statement or supporting documents. In the result the reference is answered against the petitioner.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 13th December, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1st Party/Petitioner : None  
For th 2nd Party/Management : None

**Documents Marked :**

On the petitioner's side

Ex. No.	Date	Description
.....N/A.....		

**On the Management's side**

Ex. No.	Date	Description
.....N/A.....		

नई दिल्ली, 3 जनवरी, 2014

का०आ० 277.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई के पंचाट (37/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/01/2014 को प्राप्त हुआ था।

[सं० एल-12012/74/2010-आईआर(बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 3rd January, 2014

**S.O. 277.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 37/2011) of the Central Government Industrial Tribunal-cum-Labour Court Chennai as shown in the Annexure in the Industrial Dispute between management of Indian Bank and their workman, received by the Central Government on 01/01/14.

[No. L-12012/74/2010-IR(B-II)]  
RAVI KUMAR, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 22nd November, 2013

**Present:** K.P. PRASANNA KUMARI  
Presiding Officer

#### Industrial Dispute No. 37/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their workman)

#### BETWEEN

Sri. S. Mathuranayagam : 1st Party/Petitioner

AND

The Asstt. General Manager : 2nd Party/Respondent  
(Circle Head)  
Indian Bank, Circle Office,  
M.K.M. Complex  
210C/1, S.N. High Road  
Tiruchendur-628206

#### Appearance:

For the 1st Party/ : Sri J. Thomas Jeyaprabakaran,  
Petitioner Authorized Representative  
For the 1st Party/ : M/s T.S. Gopalan &  
Respondent Co. Advocates

#### AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order NO. L. 12012/74/2010-IR(B-II) dated 18.04.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Indian Bank in imposing the punishment of compulsory retirement with superannuation benefits from the bank's services w.e.f. 12.11.2008 upon

Sri Mathuranayagam, Ex- Chief Cashier is just and proper? What relief the concerned workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 37/2011 and issued notice to both sides. The petitioner appeared through authorized representative and the respondent through its counsel and filed their claim and counter statement respectively.

3. The averments in the Claim Statement in brief are as below:

The petitioner has joined the service of the Respondent Bank as Sub-Staff. He was subsequently promoted to the Clerical Cadre. He was working at Tirunelveli junction of the branch at the time when disciplinary proceedings were initiated against him. The petitioner was allotted the Chief Cashier post by Office Order dated 31.05.2003. The order was to take effect from 01.06.2003 which happened to be a holiday. On 02.06.2003 the petitioner was on leave. Hanifa who is immediately below the petitioner in seniority has discharged the function of Chief Cashier on this day. The closing cash balance as per the records was Rs. 20,31,597.10 on 02.06.2003. On 03.06.2003 the petitioner had availed permission for 1 hour from 10.00 AM to 11.00 AM. Hanifa had started the duties as Chief Cashier by the time the petitioner reached office. He had brought from the safe Rs. 4.6 lakhs for the day's operations. He had handed over Rs. 2.6 lakhs out of this to the Cash Payment Soff. The petitioner arrived at the office by 11.00 AM. Hanifa handed over Rs. 2,92,795/- to him. The petitioner has accepted this on verification and had occupied the seat of Chief Cashier. But he had not verified the cash in the safe. At the end of the day, while incorporating the details of bundles and sections in the Cash Movement Register and arriving at the closing position the petitioner noticed some difference in the number of bundles as shown in the Cash Movement Register and the system. Several alterations were found in the Cash Movement Register. On verification of the Cash Balance Book the petitioner found discrepancies in the number of bundles found in the Cash Balance Book and the Movement Register as on the close of 02.06.2003. With a view to tally the cash position and to make entries in the Movement Register legible, the petitioner scored the entire closing entry in the Cash Movement Register and incorporated the final figures in tune with the figures found in the system. This was done in good faith. The petitioner had then taken the cash to cash safe alongwith the Asstt. Branch Manager. While lodging the cash in the safe, the Assistant



Branch Manager noticed shortage of two bundles in the denomination of Rs. 100/- amounting to Rs. 2.00 lakhs. Instead of 27 bundles, only 25 bundles were available. The Asstt. Branch Manager submitted a report to the Circle Office. A Police complaint was preferred against the petitioner alleging that he had stolen cash worth Rs. 2.00 lakhs. A departmental enquiry was conducted against the petitioner. The petitioner was found guilty of the charges alleged. The Disciplinary Authority imposed a punishment of dismissal from service on the petitioner. On appeal filed by the petitioner the Appellate Authority modified the punishment to Compulsory Retirement with superannuation benefits. The petitioner has not committed the offence alleged. The Criminal Court has acquitted the petitioner of the charges made against him. The Respondent is not justified in imposing the punishment of Compulsory Retirement on the petitioner on the basis of a wrong finding made by the Enquiry Officer. The petitioner is entitled to be reinstated into service with back wages and other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows:

The petitioner had acquiesced to the punishment of Compulsory Retirement imposed on him by commuting a part of the pension and receiving the amount. The petitioner was working in Tirunelveli junction branch of the Respondent Bank. It is a large branch and there used to be 3 or 4 Cashiers in the branch. One of them will be Chief Cashier and will be responsible for accounting the cash handled. At the closing of the branch the Chief Cashier is to account the physical cash to the Assistant Branch Manager. They together will keep the physical cash inside the currency safe. The Chief Cashier is to receive the cash from the other Cashiers. He is to physically verify the cash received from others. He is to prepare a manual Cash Balance Book mentioning the particulars of bundles, sections and pieces of currency notes. 100 pieces will make one section and 10 sections will make one bundle. If there is any shortage or excess at the time of verification of the physical cash, the same should be brought to the notice of the Assistant Branch Manager. If no excess or shortage is reported by the Cashier before accounting the available cash for closing and any shortage or excess is noticed thereafter the Chief Cashier will be responsible for the same. On 03.06.2003 the petitioner who was the Chief Cashier, on receipt of cash from, other cashiers had made entries about the cash handed over by them in the computer and the amounts so received was Rs. 3,99,717/-. He reported the cash available as Rs. 46,63,820/- Then

he prepared a manual Cash Balance Book giving particulars of denominations. Then he called Assistant Branch Manager for verification before placing the cash in the safe. When the Asstt. Branch Manager physically verified the cash he found it short of two bundles of Rs. 100/- denomination amounting to Rs. 2.00 lakhs. In the Cash Movement Register, the petitioner had entered the cash available as 7 bundles of Rs. 100 denomination apart from other denominations but had corrected it as 9 bundles. He made the correction to make it appear that physical cash available at the time of closing was 27 bundles of Rs. 100 denomination though only 25 bundles of this denomination were available. The matter was reported to the Circle Office, Tirunelveli immediately. A Vigilance Officer investigated the matter on the same day and submitted a preliminary report. The petitioner was aware of shortage of two bundles of Rs. 100 denomination, but still he showed it as 9 bundles as if this much bundles were available. A Show Cause Notice was issued to the petitioner calling upon him to state why disciplinary action shall not be taken against him. Since his reply was found unsatisfactory, charge sheet was issued charging him with the misconduct of having stolen Rs. 2.00 lakhs. The Enquiry Officer who enquired into the matter gave a report holding that the charges against the petitioner are proved. The punishment of dismissal was imposed on the petitioner after hearing the petitioner. In appeal the punishment was modified to one of Compulsory Retirement. The petitioner is not entitled to any relief.

5. The evidence in the cash consists of oral evidence of the petitioner examined as WW1 and the documents marked as Exs. W1 to Ex. W14 and Ex. M1 to Ex. M36.

6. The points for consideration are:

- (i) Whether the Respondent is justified in imposing the punishment of Compulsory Retirement on the petitioner?
- (ii) Whether the petitioner is entitled to be reinstated in service?

### The Points

7. The petitioner who had entered the services of Respondent Bank as Sub-Staff and subsequently promoted as Clerk was working in the Tirunelveli junction of the branch at the time of the incident which led to the punishment of compulsory retirement on the petitioner. By Office Order dated 31.05.2003 the petitioner was given the responsibility of Chief Cashier of the branch. 01.06.2003, on which date the order was to take effect was a holiday and the petitioner was on leave on 02.06.2003, the next day.

He reached the office late on 03.06.2003. By the time he reached the office, Hanifa who is his immediate junior and was one of the Cashiers and had worked as Chief Cashier on the previous day in the absence of the petitioner, had occupied the seat of Chief Cashier with the permission of the superior officer. After the petitioner reached office, he had taken charge from Hanifa and had started to work as Chief Cashier. In the evening, on the closure of the business, the petitioner who had received the cash from the other cashiers, on making necessary entries in the computer system and also manual entries in certain records had taken the cash to the Assistant Branch Manager to be lodged in the Cash Safe. The Asstt. Branch Manager had noticed a shortage of Rs. 2.00 lakhs. It was accordingly the petitioner was proceeded against and the punishment imposed on him.

8. There is no dispute regarding the fairness of the domestic enquiry that is held against the petitioner. Both sides are relying upon the enquiry proceedings, the evidence let in and the documents, that were marked in the enquiry in support of their respective contentions. The Enquiry Officer who had examined the relevant witnesses including the Asstt. Branch Manager, the Branch Manager and Hanifa from who the petitioner had taken charge had arrived at the conclusion that there was shortage of Rs. 2.00 lakhs when the petitioner approached the Asstt Branch Manager for lodging the cash in the cash safe, that he had not been able to account for the deficit and had found the petitioner guilty of the charges.

9. The charge framed against the petitioner in the enquiry proceedings is that on 03.06.2003, when he was acting as the Chief Cashier, he had stolen Rs. 2.00 lakhs and thus there was shortage of Rs. 2.00 lakhs, that he had not reported the cash shortage to the checking official before handing over the cash for checking that he had entered in the Cash Balance Book the final cash balance figure shown in the computer without actual physical possession of the cash to that extent, that he had altered in the Cash Movement Register the number of bundles without actual possession of the given number of bundles and thus the bank had incurred a loss of Rs. 2.00 lakhs.

10. MW1 in the enquiry proceedings was the Senior Manager of Tirunelveli junction branch during the period in question. This witness had no direct knowledge of the incident. The relevant documents pertaining to the incident are marked through this witness. He came to know about the incident on 03.06.2003, the date of the incident itself by 06.15 PM when the Asstt. Branch Manager approached him at his cabin and reported to him about the cash shortage of Rs. 2.00 lakhs. MW2 was working as Cash Receipt Clerk at that time. She has deposed as to what was the amount received by her on that day and how much amount she has handed over to the petitioner, the Chief Cashier after end of business of the day. She knew about the shortage of cash only later

at night on the basis of telephonic information given to her. MW3 was in SB Payment Section on that day. She too had deposed about the amount received by her and the amount she had handed over to the petitioner at the end of the day. MW4 is the Vigilance Officer who had visited the branch and enquired into the alleged shortage of cash. Hanifa who had started on the day as Chief Cashier is examined as MW5. He having been the Chief Cashier on the previous day he had deposed based on the relevant documents that the closed reserve balance on 02.06.2003 was 14 bundles of Rs. 500/- denominations, 8 bundles of Rs. 100/- denomination, 3 bundles of Rs. 50 denomination and 5 bundles of Rs. 10/- denomination. According to him, on 03.06.2003, he had drawn 4 bundles of Rs. 100/- denomination, 1 bundle of Rs. 50/- denomination and 1 bundle of Rs. 10 denomination from the reserve cash. So what was left as reserve cash at the safe was Rs. 14 bundles of Rs. 500/- denomination, 4 bundles of Rs. 100/- denomination, 2 bundles of Rs. 50/- denomination and 4 bundles of Rs. 10/- denomination when brought to his notice that there was difference in the Cash Balance Register and Cash Movement Register so far as the entries in respect of 02.06.2003 was concerned, he has stated that this was because one section of Rs. 500/- denomination was kept in till cash in view of unsorted notes. The difference of 1 bundle in the denomination of Rs. 100/- was because issuable and non-issuable notes were kept in the till cash. This witness has deposed that on 03.06.2003 he had handed over Rs. 17,71,597.10 to the petitioner at 10.21 AM. He stated that the petitioner has physically verified and acknowledged the cash. However, he stated during his cross-examination that the petitioner did not physically verify the cash in the safe but this was taken over on the basis of statement in the computer. The Assistant Branch Manager who is examined as MW6 has stated how he happened to detect the shortage. According to him, the petitioner called him by 06.15 PM for checking the cash and for keeping the same inside the safe. He did not inform that there is any shortage in cash. He verified the cash balance through the computer with the cash balance signed by the petitioner and this tallied. He verified the till cash from there itself and it was also found correct. Then both of them took the till cash alongwith the bundles to the safe room. He kept the till cash box inside and verified the reserve cash kept inside with the Cash Movement Register and found it correct. However, on verifying the bundles brought by the petitioner he found shortage of two bundles of Rs. 100/- denomination amounting to Rs. 2.00 lakhs. When he enquired with the petitioner about this, he was unable to explain. Search was made at the Cash Counters to ascertain if any bundles were left out. On ascertaining that there is a shortage of Rs. 2.00 lakhs, MW6 had reported the matter to the Branch Manager.

11. The initial argument that has been advanced by the Authorized Representative of the petitioner has been that deficit of Rs. 1.5 lakhs has occurred on the previous day itself. The argument is based on some discrepancy found in the balance sheet and the Cash Balance Book of 02.06.2003. The cash balance sheet of 02.06.2003 shows the closing balance as Rs. 20,31,597.10. In this the number of bundles of Rs. 500/- denomination put in the reserve cash are shown as Rs. 1,500/- and that of Rs. 100/- denomination as Rs. 9,000/- However, above the No. 5 in Rs. 1,500/-, No. 4 is written and above the No. 9 in Rs. 9,000/-, No. 8 is written. In the Cash Movement Register which is marked as Ex.M9, with reference to 02.06.2003, No. 15 which is shown as the number of bundles of Rs. 500/- denomination, correction is made and 14 is overwritten. So also in the column for number of notes of Rs. 100/- denomination 9 is scored and corrected to 8. It is with reference to this discrepancy, Hanifa has deposed that since one bundle is kept in till cash in view of unsorted notes, this difference has occurred. According to the Authorized Representative actually only 14 sections of Rs. 500/- denomination and 8 bundles of Rs. 100/- were there on 02.06.2003 even though it is shown as 15 and 9 respectively. According to him, if it is only 14 and 8 respectively the closing balance would not have been Rs. 20,31,597.10 but 1.5 lakhs less than that. The Enquiry Officer has given an annexure to the enquiry report and has stated with reference to this that such a deficit would not have been possible. Certainly, he has accepted the evidence given by Hanifa that a difference is because one bundle was kept among the till cash and there were unissued notes also.

12. When the circumstances are taken into account the arguments advanced by the Authorized Representative could not be accepted. The Asstt. Branch Manager who had counted the balance before putting the cash in the Cash Safe had done the checking on the previous day also. It is unlikely that the Manager who had dutifully done the over-checking on closure of business on 03.06.2003 had not done so on 02.06.2003 in which case he would certainly have found out the deficit of Rs. 1.5 lakhs, if there was any. True, Hanifa himself has stated during his cross-examination that the petitioner has not physically verified the reserve cash kept in the safe but only the amount that was brought by him to the counter and the amount in the safe was verified with reference to the balance shown in the computer. As pointed out by the Enquiry Officer, it is upon the petitioner who was taking charge as the Chief Cashier to do the verification if he wanted to. His having reached late to the office on the day was not an excuse for him not to do the verification. In any case the argument of the Authorized Representative that there was deficit on the previous day itself cannot be accepted.

13. During his argument as well as in the argument notes submitted on behalf of the petitioner it is repeatedly

stated that even if there is any deficit it is only of Rs. 50,000/- since the deficit of Rs. 1.5 lakhs is of the previous day. Even assuming for the sake of argument that deficit of Rs. 1.5 lakhs has occurred on the previous day itself what was that was expected of the petitioner? Has he reported the matter to his Superior Officer? The evidence given by the petitioner himself is indicative of what he has done. During his examination he has stated that after getting cash from all the three cashiers, while he was closing he has found difference of Rs. 2.00 lakhs. From this version of the petitioner himself it is very much clear that at the time of closure he has noticed difference of Rs. 2.00 lakhs, even if part of it has occurred on the previous day and only a portion, on the date on which he was in-charge. According to him, on verification he found alteration in the Cash Movement Register regarding entries on the previous day and he was not able to conclude whether the cash drawn in hundreds on 02.06.2003 was 4 bundles or 5 bundles. He had confusion whether it was 8 or 9 due to overwriting. He had found alteration in the number of sections of Rs. 500/- denomination also. According to him, he verified the cash balance and there it was found mentioned as 15 sections in Rs. 500/- and 9 bundles in Rs. 100/- denomination at the close of 02.06.2003. In the Cash Movement Register, as per the figures available for 03.06.2003, after taking cash in the morning, as noted by Hanifa, was 14 in Rs. 500/- denomination and 4 in Rs. 100 denomination. According to the petitioner, from this he assumed that difference of Rs. 1.5 lakhs was located as per the Cash Balance Book. There was another entry for Rs. 53,000/- as soiled and cut notes also in the Cash Balance Book. So he understood that the mistake was with reference to the figures noted in the Cash Movement Register on the previous day. So he scored all the four entries earlier made by him against columns of Rs. 500/-, Rs. 100/-, Rs. 20/- and Rs. 10/-. He wrote the number of bundles afresh as seen from the computer. Then he had informed the Asstt. Branch Manager for lodging the cash. When the Asstt. Branch Manager verified the cash it was found that against the total of 27 bundles, there were only 25 bundles.

14. Even assuming that the petitioner had felt that the deficit was that of the previous day what was expected of him was to inform the superior officer immediately. He himself has stated that because of the discrepancy in the entries in the Cash Balance Register and the difference in the entries between the Cash Balance Register and Cash Movement Register, he was confused. In that case, rather than making the alteration based on assumption he should have informed the Asstt. Branch Manager and verified the reserve cash in the safe at least at that time. On the other hand without stating anything about this he has asked the Asstt. Branch Manager to lodge the cash.



15. In any case it is admitted on behalf of the petitioner that there is a deficit of Rs. 50,000/-. How did this deficit occur? What the petitioner has stated in the examination in the enquiry proceeding is that Rs. 53,000/- was shown separately as soiled and cut notes and he had felt that if this also is added the deficit would be made good. But if this is the case there would be an excess of Rs. 3,000/-. As Chief Cashier he is bound to report the excess cash, if any also. During the argument this case in respect of Rs. 53,000/- has not been advanced at all. On the other hand it is very much admitted that there is a deficit of Rs. 50,000/-. How did this deficit happen? The petitioner has not explained. More than anything is the fact that the petitioner kept mum about the deficit and asked the Asstt. Branch Manager to lodge the cash in the safe without doing this. This is very much against him.

16. An attempt has been made by the Authorized Representative to make out that the petitioner is a very honest, sincere employee. DW1 has been brought in to state that on a previous occasion MW2, one of the cashiers had inadvertently left Rs. 20,000/- in her cash counter and this was found out by petitioner and was handed over to then Chief Cashier. MW2 herself has stated that she had no direct knowledge of such an incident but she was told that a bundle of notes was recovered from her Cash Counter and handed over to the Chief Cashier. Even if this incident is true it could not help the petitioner in view of the fact that there was a deficit on the day and yet this was not reported to the superior officer.

17. The Authorized Representative has also referred to the judgment in the criminal case that was registered against the petitioner regarding the incident. As seen from the judgment the charge against the petitioner was one of theft. The Court had found that the charge is not established and had acquitted him of the charges. Certainly acquittal in the criminal case itself is not sufficient to give a finding in favour of the petitioner in the departmental proceedings. It is a case where there was a deficit which was not accounted for by the petitioner. Attempt has been made by the Authorized Representative to make out that proper measures were not taken for security inside the branch and there was probability of outsiders reaching the Cash Counter. As pointed out by the Enquiry Officer, the branch was working under the same circumstances and same condition for some time and the petitioner was also very much aware of the drawbacks, if any in the arrangements in the bank. He could not rely upon such drawbacks, if any and could not fall upon them as a defence. Even though the Criminal Court has stated that the offence of theft charged against the petitioner is not established, it is an admitted fact

that there was deficit for which he was accountable, but did not. The Enquiry Officer has justly found the petitioner guilty of the charge.

18. The punishment of removal from service imposed by the Disciplinary Authority was modified by the Appellate Authority as Compulsory Retirement with superannuation benefits. This punishment could not be said to be disproportionate to the gravity of the offence committed by the petitioner. So I do not find any necessity of interference in the punishment also. The petitioner is not entitled to any relief.

19. In the result, the reference is answered against the petitioner.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd November, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined:

For the 1st Party/ : WW1, S. Mathuranayagam  
Petitioner

For the 2nd Party/ : None  
Management

#### Documents Marked

##### On the petitioner's side

Ex.No.	Date	Description
Ex.W1	11.09.2009	Petition under Section 2(A) of ID Act over the punishment imposed
Ex.W2	08.02.2010	First Rejoinder to the reply to the management for the ID raised
Ex.W3	25.05.2010	Second Rejoinder to the reply of the management
Ex.W4	17.12.2003	Defence summing up by defence representative
Ex.W5	01.01.2004	Letter ref. CO: TNY: VG: 493:2004 by Disciplinary Authority enclosing the findings dated 30.12.2003 of the enquiry officer
Ex.W6	19.01.2004	Sri S. Mathuranayagam's comments over the enquiry officer's findings
Ex.W7	22.03.2007	Letter ref. IBEU:502:2004-06 from Indian Bank employees Union, addressed to General Manager/ HRM, Chennai
Ex.W8	26.08.2008	Letter ref. CO:TNY:VG:93: 2008-09 proposing the punishment of "Dismissal without notice"



Ex.W9	21.10.2008	Reply by Sri S. Mathuranayagam to the second Show Cause Notice	Ex.M12	—	Credit voucher for Rs. 17.00 lacs towards cash received from Veeraraghavapuram dated 03.06.2003
Ex.W10	12.11.2008	Letter ref. CO:TNV:VG:110:2008-09 enclosing the speaking orders of the Disciplinary Authority dated 12.11.2008	Ex.M13	—	Debit voucher for Rs. 2.00 lacs towards funds in transit to Kanganankulam branch alongwith a requisition slip for withdrawal of cash both dated 03.06.2003
Ex.W11	27.12.2008	Appeal submitted by Sri S. Mathuranayagam to the Appellate Authority against the punishment of "Dismissal without notice"			
Ex.W12	20.08.2009	Letter ref. no HRM/DPC/429/2009 enclosing the orders of the Appellate Authority	Ex.M14	—	Credit voucher for Rs. 14.00 lacs towards cash received from Palayamkottai branch alongwith their claim form for cash remittance—both dated 03.06.2003
Ex.W13	11.10.2008	Judgment order of Judicial Magistrate No. 1, Tirunelveli acquitting Sri S. Mathuranayagam			
Ex.W14	05.06.2003	First Information Report by City Crime Branch, Tirunelveli City	Ex.M15	—	Debit voucher (SR 11) for Rs. 2.00 lacs dated 03.06.2003 for cash shortage signed by S. Mathuranayagam
<b>On the Management's side</b>					
<b>Ex.No.</b>	<b>Date</b>	<b>Description</b>	<b>Ex.No.</b>	<b>—</b>	
Ex.M1	—	Extract of Cash Handling Manual—Clause-21	Ex.M16	—	Two letters addressed to Branch Manager, Tirunelveli junction by S. Mathuranayagam both dated 03.06.2003
Ex.M2	07.07.2003	Show Cause Notice issued to petitioner by the Bank	Ex.M17	—	Letter dated 04.06.2003 by Sri S. Mathuranayagam addressed to Branch Manager, Tirunelveli Junction
Ex.M3	29.07.2003	Petitioner's reply to Show Cause Notice dated 07.07.2003			
Ex.M4	10.09.2003	Charge Sheet issued to the petitioner	Ex.M18	—	Letter dated 03.06.2003 by Mr. K. Selvakumar to the Senior Manager, Tirunelveli Junction branch
Ex.M5	15.10.2003 04.11.2003 05.11.2003 11.11.2003	Enquiry Proceedings	Ex.M19	—	E-mail dated 03.06.2003 by Tirunelveli Junction to AGM/CO/TNY
Ex.M6	19.11.2003	Written submissions of Presenting Officer	Ex.M20	—	E-mail dated 04.06.2003 from CI Branch, Tirunelveli to AGM/CO/TNY
	—	Attendance Register for the month of June—2003			
Ex.M7	—	Work allocation for clerical staff w.e.f. 01.06.2003	Ex.M21	—	CI brach letter dated 3rd/4th June 2003 to the Superintendent of Police, Tirunelveli
Ex.M8	—	Cash Balance Book as on 02.06.2003 and 03.06.2003	Ex.M22	—	Report of Mr. S. Thirunavakarasu, Vigilance Officer dated 05.06.2003 addressed to AGM/CO/TNY with six enclosures
Ex.M9	—	Cash Movement Register—2 pages			
Ex.M10	—	Key Movement Register			
Ex.M11	—	Debit voucher for Rs. 4.00 lacs towards funds in transit to Ukkirankotai branch alongwith a requisition slip for withdrawal of cash—both dated 03.06.2003	Ex.M23	—	Palayamkottai branch letter dated 04.05.2003 to Tirunelveli Junction branch alongwith one letter dated 04.06.2003 by Mr. P. Krishnan CI/Sh and Mr. S.S. Jeyaraj

Ex.M24	—	Ukkrankottai branch letter dated 04.06.2003 addressed to AGM/CO/TNY with two enclosures from Mr. Vallimuthukumarasamy, AM and Kalaiselvan CI/Sh	नई दिल्ली, 3 जनवरी, 2014
Ex.M25	—	Letter dated 04.06.2003 from Cheranmahadevi branch regarding cash verification at Kanganankulam branch and letter dated 04.06.2003—both are addressed to CO/TNY with one annexure to Kanganankulam branch letter	का०आ० 278.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रोयल एअरवेज के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नई दिल्ली के पंचाट (संदर्भ संख्या 157 of 2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/01/2014 को प्राप्त हुआ था। [सं० एल-11012/50/2003-आईआर (सी-1)] एम० के० सिंह, अनुभाग अधिकारी
Ex.M26	—	Letter dated 04.06.2003 from Sri K. Selvam AM and Sri R. Kadarkari CI/Sh	New Delhi, the 3rd January, 2014
Ex.M27	—	List of active users current day run dated 03.06.2003	<b>S.O. 278.</b> —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 157/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of M/s Royal Airways and their workmen, received by the Central Government on 03/01/2014.
Ex.M28	—	Correspondence/record with regard to return of one cheque no. 375500 dated 27.05.2003 for Rs. 50,000/-	[No. L-11012/50/2003-IR(C-I)] M.K. SINGH, Section Officer
Ex.M29	—	Cashier's receipt scroll dated 03.06.2003 with eight pages	<b>ANNEXURE</b>
Ex.M30	—	Cashier's payment scroll dated 03.06.2003	<b>BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DELHI</b>
Ex.M31	—	Day book for 03.06.2003 in four pages	<b>I.D. No. 157/2011</b>
Ex.M32	—	Copy of computer statement showing entries of cash handed over to the petitioner (Chief Cashier) by M/s A. Muthammal, Stanislaus Lydia and RSA Haneefa of Rs. 3,99,537/- with annexures A1 to A14	Shri Subhash Singh, S/o Sh. Jai Singh, R/o C-B-280, Ring Road, Narayana, New Delh-28 ...Workman <i>Versus</i>
Ex.M33	02.03.2010	Letter from Tirunelveli junction branch to C.O., T. Veli regarding Gratuity amount of Rs. 1,98,150/- recovered towards the loss	M/s. Royal Airways, Cargo Complex, IGI Airport, Terminal No. 1, Palam, New Delhi. ...Management
Ex.M34	—	Receipt for payment of commuted value of pension Rs. 1,98,363/- (vide A/c Statement dated 28.05.2011)	<b>AWARD</b>
Ex.M35	30.01.2011 27.06.2012	Receipt of PF and VPF Contribution Rs. 2,57,060.62 less loans etc.— Received Rs. 1,45,638/- vide A/c statement dated 28.04.2011	A security guard was employed by Royal Airways Ltd. (herein after referred to as the management) in the year 1994. He worked for the management continuously till 19.12.2002. The security guard claimed that his services were illegally dispensed with by the management on 21.12.2002. Contra to it, the management took a stand the he left his duties in an unauthorized manner on 19.12.2002 and since then he absented himself from duties. Charge sheet was served and domestic enquiry was constituted. The Enquiry Officer submitted his report against the security guard and show cause notice of proposed
Ex.M36	—	Application for Pension (For Receipt of Pension periodically vide A/c Statement—30.01.2011 to 27.06.2012)	

punishment of dismissal from service was sent to the latter. Since no response was received, the management treated absence of the security guard as abandonment of service. Denying this stand, the security guard raised a dispute before the Conciliation Officer where he claimed reinstatement in service. Since his claim was contested by the management, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-11012/50/2003-IR(C 1), New Delhi dated 17.12.2003, with following terms:

"Whether action of the management of Royal Airways Ltd. in dismissing Shri Subhash Singh from service with effect from 20.12.2012 is just fair and legal? If not, to what relief is the concerned workman entitled to?"

2. Claim statement was filed by the security guard, namely, Shri Subash Singh, pleading therein that he was working as such with the management since 1994. His last drawn wages were Rs. 4183.00 per month. He worked honestly and diligently, without giving any chance of complaint to his superiors. He was deputed to work at 15, Mercantile House, Kasturba Gandhi Marg, New Delhi. The management had neither provided him with legal facilities nor his service record was prepared. He raised oral demands in that regard, which annoyed the management. He performed his night duties on 19.12.2002. 20.12.2002 happened to be his off day. He reported for his duties on 21.12.2002. He was not allowed to join his duties. His services were terminated without disclosing any reason and payment of his wages. His dues towards leaves, bonus, and overtime work were not paid. No notice pay and retrenchment compensation was given to him. His services were dispensed with without any charge sheet or enquiry in that regard. He raised a demand *vide* letter dated 02.01.2003 seeking reinstatement in service, but to no avail. He is unemployed since the date of termination of his service and facing starvation. He claims reinstatement in service with continuity and full back wages.

3. Claim was demurred by the management pleading that the claimant has been guilty of gross negligence and misconduct for which an enquiry was conducted. It has been projected that on 19.12.2002, the claimant was deputed to perform night duties at Cargo Complex, IGI Airport, New Delhi. His duty hours commenced from 5.30 p.m. At about 6.15 p.m. he was found standing at bus stand in front of Sanatan Dharam Mandir, Mehram Nagar, New Delhi by Shri Dinesh Singh, Manager (Security), who questioned him about his presence there. Claimant offered no explanation and thereafter stopped reporting for his duties. Letter dated 20.12.2012 was sent to the claimant calling his explanation for his gross act of indiscipline and negligence of leaving his duty place on 19.12.2002. Claimant opted not to submit any reply to that letter.

4. The management narrates that on 02.01.2003, Shri Dinesh Singh wrote letter of Col. I.P. Singh, Head (Admn. & Security) apprising him of the facts, with a request to initiate necessary action in the matter. *Vide* letter dated 10.01.2013, Col. Singh enquired from Shri Dinesh Singh as to whether the claimant had joined his duties or offered any application for his absence. Shri Dinesh Singh informed Col. I.P. Singh, *vide* his letter dated 19.01.2013, that the claimant continues to remain absent from duties and no response has been received from him. After waiting for a long time, charge sheet dated 20.01.2013 was drafted, wherein charges of leaving place of duty without any permission and unauthorized absence from duty were levelled on the claimant. Charge sheet was sent to the claimant by registered post, but it was returned undelivered. Again letter dated 11.02.2003 was sent wherein copy of charge sheet was enclosed, calling upon the claimant to offer his explanation within three days. The said letter was delivered to the claimant by the postal authorities on 17.02.2003. Claimant opted not to send any response to that letter. Another letter dated 28.02.2003 was sent to the claimant wherein he was informed that enquiry would be conducted against him by Shri B.B. Murgai, Supplies Manager. Claimant replied to that letter, wherein he levelled allegations to this effect that his services were illegally dispensed with on 21.12.2002. He informed initiation of conciliation proceedings also. Letter dated 06.03.2003 was sent calling upon the claimant to attend the enquiry proceedings on 17.03.2003, but to no avail. Another letter dated 17.03.2003 was sent informing the claimant that the enquiry proceedings were scheduled for 26.03.2003. Claimant opted not to attend the enquiry proceedings, which facts constrained the Enquiry Officer to proceed against him *ex-parte*. The Enquiry Officer conducted the enquiry in a fair manner and submitted his report dated 28.04.2003, concluding therein that charges stood established against the claimant.

5. The management announces that on receipt of report of the Enquiry Officer, it decided to impose punishment on the claimant. *Vide* letter dated 29.04.2003, all the documents relating to the enquiry were sent to the claimant and he was called upon to explain as to why punishment of dismissal from service should not be imposed upon him. At that juncture, the management took a decision not to terminate his services since he had abandoned his job. Claim has been made that the cause projected by the claimant has no substance, hence it may be dismissed.

6. On pleadings of the parties, following issues were settled by my learned predecessor:

- (i) Whether workman has been guilty of negligence and misconduct as alleged? If so, its effect?
- (ii) Whether enquiry conducted by the respondent is fair and proper?

(iii) As per terms of reference.

7. Vide order No. Z-22019/61/2007-IR(C-II), New Delhi dated 11.02.2008, case was transferred for adjudication to the Central Government Industrial Tribunal No. II, New Delhi, by the appropriate Government. It was re-transferred to this Tribunal for adjudication, vide order No. L-11012/50/2003-IR(C-I), New Delhi dated 30.03.2011, by the appropriate Government.

8. When case was being adjudicated, the Central Government Industrial Tribunal, No. II, New Delhi, vide its order dated 05.04.2011, treated issue No. 2 as preliminary issue.

9. Claimant entered the witness box to establish his case on the preliminary issue. Shri Sanjay Sharma and Shri B.B. Murgai were examined by the management to establish that the enquiry conducted against the claimant was in consonance with principles of natural justice and fair play. No other witness was examined by either of the parties.

10. During the course of arguments on the preliminary issue, authorized representative of the claimant presented that as per case of the management no punishment was awarded to the claimant. Shri Abhinav Chaturvedi, authorized representative for the management, took time to seek advice and made a statement on 17.04.2013 that though notice of proposed punishment was sent to the claimant vide letter dated 29.04.2003, yet no punishment was awarded to him. In view of the above facts, arguments were heard on whole of the case instead of the preliminary issue. Shri Rakesh Kumar, authorised representative, advanced arguments on behalf of the claimant. Shri Abhinav Agnihotri, authorised representative, raised his submissions on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

#### **Issue No. 1 & 2.**

11. Charge-sheet Ex. MW1/1 highlights that on 19.12.02 the claimant reported for his duties at cargo office at 5.30 pm. He left his duty place unauthorisely and was found standing at bus stand in front of Sanatan Dharam Mandir (Mehram Nagar) to board a bus for his home, by Shri Dinesh Singh at about 6.15 pm. When he was questioned for his irresponsible action, he did not reply properly. It has also been reported therein that thereafter the claimant has not attended his duties from 20.12.2002 and onwards thereby he resorted to unauthorized absence. Charges of leaving place of duty without any permission of Manager Security and unauthorized absence without any permission or authority or sanction of any leave were levelled against him.

12. In letter dated 07.03.2003, proved as Ex. WW1/2, the claimant denied allegations levelled against him and claimed that he performed his duties till 8.00 a.m. on

20.12.2002. Since 20.12.2002 was his off day, hence he reported for his duties on 21.12.2002. He was not taken on job and his services were orally terminated. Thus it is evident that the claimant denied all allegations levelled against him, in the charge-sheet.

13. The management claims that it is not covered under the Industrial Employment (Standing Orders) Act, 1946 and model standing orders are not applicable to it. The claimant could not show that it is a case where model standing orders should be made applicable. In such a situation, the general law governing employer employee relationship would be applicable to the present controversy. To note the misconducts, known in the sphere of master and servant relationship, efforts would be made to traverse legal developments. The concept of misconduct in employer and employee relationship is based upon the nature and relationship itself and implied and express conditions of service. These conditions would include the conditions that the servant would be trustworthy, that his acts would justify the confidence of the employer, that the employee will not so act as to prejudice or damage the interests of the employer, that the employee will not act or conduct or behave himself in a way inconsistent or incompatible with the faithful discharge of his duties to the employer, that he would not behave in an insulting manner, that he would not be habitually negligent. Reference can be made to the precedent in S.O. Tiwari [1960](I) LLJ 167].

14. In Smith's Law of Master and Servant (8th Edition, Pp. 79) following misconducts are detailed which may justify discharge of a servant from service:

- (i) willful disobedience of any lawful order of his master.
- (ii) gross moral misconduct, whether pecuniary or otherwise, which is inconsistent with the fulfillment of his conditions of service.
- (iii) negligence in business or conduct calculated seriously to injure his master's business....."

15. In Jagmohan Das Jagjivan Das Modi [1962 (2) LLJ 507] it was ruled by Gujrat High Court that a master is entitled to dismiss his servant for various reasons and some of them are as follows:

- (i) Where the act or conduct of the servant is prejudicial or likely to be prejudicial to the interests of the master or to the reputation of the master.
- (ii) Where the act or conduct of the servant is inconsistent or incompatible with the due or peaceful discharge of his duty to his master.
- (iii) Where the act or conduct of a servant makes it unsafe for the employer to retain him in service.
- (iv) Where the act or conduct of a servant is so grossly immoral that all reasonable men will say that the employee cannot be trusted.



- (v) Where the act or conduct of the employee is such that the master cannot rely on the faithfulness of his employee;
- (vi) Where the act or conduct of employee is such as to open before him temptations for not discharging his duties properly;
- (vii) Where the servant is abusive or if he disturbs the peace at the place of his employment;
- (viii) Where the servant is insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of master and servant;
- (ix) Where the neglect of the servant, though isolated, tends to cause serious consequences.

16. The law of master and servant has now been developed and various acts which were previously misconducts are not so considered unless they are in aggravated form while certain other acts have taken their place. The rights and duties of employers and employees have undergone transformation on account of sociological factors and new conceptions of social justice. The broad categories of "misconduct" on the part of an employee will not be the following:

- (i) The first category will be non-performance of duties on the part of an employee or any defective performance of duties. This will include negligence, absence without leave, loitering during office hours, sleeping while on duty, go slow and similar other defect in work.
- (ii) The next category is intentional disobedience of any lawful or reasonable order of the employer as well as any act of insubordination to the employer or any superior officer.
- (iii) The next category of misconduct is an act of bad faith or dishonesty or any act which is likely to injure the interest of the employer.
- (iv) Another category of misconduct is of undesirable activities which are inconsistent with the faithful discharge of duties on the part of an employee and which will be styled as "acts subversive of discipline". This will include any other immoral or criminal act of such a nature that it makes the employee unfit for discharge of his duties.
- (v) The next category of misconduct is undesirable acts arising out of union or collective activities such as strikes, picketing, holding meetings inside the premises, collecting subscription in the premises contrary to rules.

17. In *Ram Singh* (1992 Lab. IC 2391) the Apex Court observed that though the expression 'misconduct' is 'not capable of precise definition, its reflection receives its

connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action, code of conduct but not mere error of judgement, carelessness or negligence in performance of duty, the act complained of bears forbidden quality of character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."

18. Generally speaking, misconduct is a transgression of some established and definite rule of action where no discretion is left except what necessity may demand, it is violation of definite law, a forbidden act. Misconduct means intentional wrong doing and would include unlawful behaviour. A conduct which is blameworthy would be misconduct, if by the commission or omission of acts of the employee, the employer suffers loss or it generates an atmosphere destructive of discipline. In any case, the action of misconduct must have some relation with the employee's duty to his employer. If the act complained of is found to have some relationship to the affairs of the employer's business, having a tendency to affect or disturb the peace and good order of the establishment where the employee works or be subversive of discipline in any direct or proximate sense, such act would amount to misconduct.

19. In absence of standing orders, it would be open to the employer to consider reasonably as to what conduct can be properly treated as misconduct. It would be difficult to lay down any general rule in that regard. Acts which are subversive of discipline amongst the employee would constitute misconduct, rowdy conduct in the course of working hours would constitute misconduct, misbehavior committed even outside working hours but with the employees of the said concern may in some cases, constitute misconduct, if the same is of such a character that he would not be regarded as worthy of employment and may, in certain circumstances, be liable to be called misconduct, but his will naturally depend upon the circumstances of each case. Reference can be made to the precedent in *Agnani* [1963(I) LLJ 690].

20. Any conduct which is inconsistent with due and faithful discharge of duties of service would justify an employer to initiate domestic action against the employee. As alleged in the charge-sheet, the claimant left his place of duty without any permission on 19.12.2002 and when he was questioned by Shri Dinesh Singh he could not offer any reasonable explanation in that regard. The charge-sheet further proceeds that the claimant unauthorisely absented himself from his duties since 20.12.2002. These conducts are inconsistent with due and faithful discharge of duties by the claimant and hence rightly treated as misconduct

by the management. Unauthorized absence from duty by a security guard would leave his employer dry and make the employee unworthy of credence. Therefore I do find nothing wrong on the part of the management, when a decision was taken to serve charge-sheet on the claimant.

21. After service of charge-sheet Ex.MW1/1, the Disciplinary Authority constituted a domestic enquiry against the claimant. Shri B.B. Murgai was appointed as Enquiry Officer, who sent notices to the claimant calling upon him to join the inquiry proceedings. Letter Ex.WW1/2 was sent by the claimant to the management wherein he denied allegation levelled on him, vide charge-sheet Ex.MW1/1. This letter was written by him in response to communication dated 28.2.2003, which has been proved as Ex.WW1/M3. Contents of Ex. WW1/M3 makes it clear that along with this letter a copy of charge-sheet was sent to the claimant. In his reply Ex. WW1/2 he doesn't dispute receipt of copy of charge-sheet. Thus it is evidence that charge-sheet Ex. MW1/1 was served by the management on the claimant.

22. In his testimony the claimant concedes that letter dated 17.02.2013, copy of which has been proved as Ex.WW1/M9, was received by him. When contents of Ex. WW1/M9 are perused it came to light that Shri B.B. Murgai informed the claimant that he failed to participate in the inquiry on 17.3.2003. The claimant was informed that proceedings of the inquiry would be conducted at 11.00 A.M. on 26.3.2003 at the office of the management, located at cargo complex, Indra Gandhi International Airport, New Delhi. The claimant was also informed that he can have assistance of a friend, who should be an employee of the management, to defend himself in the inquiry. Thus it is evident that the claimant was informed of the date of inquiry, in order to enable him to participate in the inquiry proceedings. Letter dated 26.3.2003, proved as Ex.WW1/M10, was sent to the claimant at his correct residential address. It was sent to the claimant by registered post, but he refused to accept it. Postal article Ex.WW1/M11 was returned undelivered, with the remarks "refused" Correct residential address of the claimant was written on the above said letter. These facts make me to comment that when this letter was tendered to him the claimant refused to accept it. Consequently it is concluded that despite notices sent to the claimant by the Enquiry Officer, calling upon him to join the inquiry proceedings, he opted not to join the inquiry at all.

23. When the workman did not avail the opportunity then subsequently he cannot challenge the enquiry which was continued in his absence, claiming it to be violative of principles of natural justice. If a workman intentionally refused to participate in the enquiry he cannot complain that his dismissal is against principles of natural justice. Law to this effect was laid in Sadul Textiles Mills Limited [1957(1)LLJ 572], Bagchi (P.N.) & Co. Private Limited [1959(1) LLJ 605], Muir Mills Company Limited (24 FJR 123), Major

U. R. Bhatnagar [1962(1) LLJ 656], Ghansham Dass Srivastava [1968(2) LLJ 246] and Laxmi Devi Sugar Mills [1957(1)LLJ 17].

24. Normally in a judicial proceedings, a party is not to be heard who absents himself from the hearing and if the quasi judicial authority holds proceedings *ex parte* in such a case, then it will not amount to misconduct on his part. Law to this effect was laid in S. Govinda Menon [1973 (2) LLJ 369]. In view of these proposition of law, it is crystal clear that the Enquiry Officer cannot be held guilty of violating the principles of natural justice. Under these circumstances, the management may argue that it was beyond the competence of Shri Murgai to accord an opportunity of being heard to the claimant.

25. When an employee abstains from the enquiry, the Enquiry Officer would be constrained to proceed *ex parte* and generally his report cannot be questioned claiming that principles of natural justice were violated. However, one of the fundamental principles of natural justice, applicable to quasi judicial proceedings, is that the authority empowered to decide must be one without bias towards one side or the other. Bias means an operative prejudice whether conscious and unconscious in relation to a party or issue. Hence bias may improperly influence a judge in arriving at a decision to any particular case. Rule against bias strikes against those factors and requires that the judge must be impartial and must decide the case objectively on the basis of the evidence on record. Bias may be defined as "anything which tends or may be regarded as tending to cause such a person to decide a case otherwise on evidence" and in case judge acts in that fashion he must be held to be biased. If a person, for whatever reasons, cannot take an objective decision on the basis of evidence on record, he shall be said to be biased. A person cannot take an objective decision in a case in which he has an interest for, as the psychologists tell us, very rarely can people take decision against their own interest. Therefore, the maxim that a person cannot be made a Judge in his own cause, rules as one of the guiding factors of the principles of natural justice. This rule of disqualification is applied not only to avoid possibility of a wrong decision but also to ensure to be confident in the impartiality of the administrative adjudication process. Minimum requirement of natural justice is that the authority must be composed of impartial persons acting fairly, without prejudice and bias. A decision which is result of bias is nullity and the trial is "*Coram non iudice*." Reference can be made to the precedent in Ranjeet Thakur [1987 (4) SCC 611].

26. Inference of bias, therefore, can be drawn only on the basis of factual matrix and not merely on the basis of insinuation, conjectures and surmises. Bias manifests in variform and may affect the decision in variety of ways. Personal bias arises from a certain relationship equation between the deciding authority and the parties which incline

him unfavourably or otherwise on the side of one of the parties before him. Such equations may develop out of varied combinations of personnel or professional hostility or friendship. In order to challenge administrative action successfully on the ground of personal bias, it is essential to prove that there is a "reasonable suspicion of bias" or a "real likelihood of bias." "Reasonable suspicion" test looks mainly to outward appearances while "real likelihood" test relates to the course of evaluation of possibilities, but in practice the tests have much in common with one another and in the vast majority of cases may lead to the same result. For this area of bias the real question is not whether a person was biased. It is difficult to prove the state of mind of a person. Therefore, what the courts see is whether there is a reasonable ground for believing that the deciding officer was likely to have been biased. In deciding the question of bias, the judge have to take into consideration the human possibilities and the ordinary course of human conduct. But there must be real likelihood of bias and not mere suspicion of bias before the proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by bias. The apprehension must be judged from a healthy, reasonable and average point of view and not on mere apprehension and vague suspicion of whimsical, capricious and unreasonable people. Reference can be made to the precedents in Metropolitan Properties Ltd. [1968 (3) All G.R. 304] S.N. Jodhawat [I.L.R. (1981) 31 Raj. 137] and B.B Rajvanshi [1988 (2) SCC 415].

27. In *Jiwan K. Lohia* [1992 (1) SCC 56], upholding the decision of the High Court while removing an arbitrator appointed by the court on the ground of bias, the Apex Court observed that with regard to the bias the test to be applied is not whether in fact bias has affected the judgement but whether a litigant could reasonably apprehend that a bias attributable might have operated against him in final decision. The test of bias is whether a reasonable man is best of relevant opinion, would have thought that the bias was likely and whether the persons concerned, "was likely to be disposed of to decide the matter only in a particular way." Therefore, the real test of "real likelihood of bias" is whether a reasonable man in possession of relevant information would have thought that bias was likely and whether the authority concerned was likely to be disposed to decide the matter in a particular way. What is relevant is the reasonable apprehension in that regard in the mind of the party. As the proper approach in case of bias for the court, is not to look into his own mind and ask "Am I biased?" but to look into mind of the party before it. The court must look at the impression which would be given to the other party. Even if the deciding officer was an impartial as could be, nevertheless if right minded person would think that, in the circumstances, there is a real likelihood of bias, the deciding officer is disqualified. Therefore, the court would not enquire whether there was bias in fact. It would suffice if reasonable people might

think that there was a bias. The reason is plain enough,' write "Lord Denning," justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking: "the judge was biased." See the Discipline of Law (1982) at Pp 87. On this count in *Municipal Properties Ltd.* (Supra) it was ruled that Mr. Lannon was disqualified from sitting as Chairman of a Rent Assessment Committee, because his father was a tenant and had a case pending against that committee. Even though it was acknowledged that there was no actual bias and want of good faith on the part of Mr. Lannon."

28. To note bias on the part of the Enquiry Officer, the record is scanned. As emerge out of the charge-sheet Ex. MW1/1 the claimant was called upon to show cause within a period of 3 days as to why an action should not be initiated against him. The claimant opted not to accept the letter and it was returned undelivered. Thereafter letter dated 11.02.2003, proved as Ex. WW1/M6, was sent calling upon the claimant to submit his reply to the charge-sheet within a period of 3 days. This letter was delivered to the claimant and acknowledgement card Ex. WW1/M4 was transmitted to the management by the postal authorities. However, the claimant opted not to file any reply to the charge-sheet. Letter dated 28.2.2003, proved as Ex. WW1/M3, was transmitted to the claimant, delivery of which has been admitted by him. He was informed that Shri B.B. Murgai has been appointed as an Enquiry Officer, who was supposed to intimate date, time and venture of inquiry to him. Till receipt of Ex. WW1/M3 by the claimant, the Enquiry Officer has not initiated inquiry proceedings in the matter.

29. Record tells that the Enquiry Officer wrote first letter to the claimant on 6.3.2003, calling upon him to join the inquiry proceedings on 17.3.2003. The Enquiry Officer was supposed to the record proceedings of the inquiry on 17.3.2003. However no proceedings of that date were recorded by the Enquiry Officer, as testified by Shri Sanjay Sharma. Enquiry Officer wrote letter Ex. WW1/M9, calling upon the claimant to joint the inquiry proceedings on 26.3.2003. Dispite receipt of that letter the claimant remained absent. However the Enquiry Officer opted not to record any proceedings of that date too. Letter Ex. WW1/M10 was written to the claimant informing him that inquiry has been scheduled for 10.4.2003. Proceedings dated 10.4.2003, purported to have been recorded by the Enquiry Officer, are placed before the Tribunal. Those proceedings being it to light that statement of the Dinesh Singh was recorded by the Enquiry Officer. However it has not been mentioned at all as to whether the presenting officer was present or not or the Enquiry Officer recorded his decision to proceed the claimant ex-parte. Statement of Shri Dinesh Singh bears signature of the witness as well as the Enquiry Officer. However the Enquiry Officer makes a candid admission that neither Shri Dinesh Singh was examined by him nor the latter produced any document before the former. The Enquiry Officer also explains that no witness was examined



before him by the management. This testimony of the Enquiry Officer is in contradiction to the record, in the form of examination of Shri Dinesh Singh. When attempts are made to reconcile the facts it emerges over the record that the Enquiry Officer opted not to record any inquiry proceedings or examine Shri Dinesh Singh during the course of inquiry.

30. Report, purporting to be recorded by the Enquiry Officer, speaks that Shri Dinesh Singh was examined and documents were also proved by him before the Enquiry Officer. Above facts would persuade an ordinary prudent man to believe that this report was drafted by someone else and the Enquiry Officer signed it, besides the statement purporting to have been made by Shri Dinesh Singh. Above inference gets support out of the facts that on 28.4.2003 the Enquiry Officer allegedly recorded his report, which was placed before the Disciplinary Authority on 29.4.2003, who in turn placed it before the Chairman on that very date and the Chairman passed the dismissal order. After passing the dismissal order, the Chairman purportedly issued a show cause notice to the claimant calling upon him to explain within a period of 7 days as to why he should not be dismissed from the service of the management. All these facts leave a room to believe that when the claimant approached the Conciliation Officer, at that juncture record relating to testimony of Shri Dinesh Singh, enquiry report, order of the Disciplinary Authority, punishment order passed by the Chairman and notice on the proposed punishment were drafted and got signed from the concerned authorities. When the Enquiry Officer fabricates statement of Shri Dinesh Singh and report Ex.WW1/M14, his real likelihood of bias against the claimant emerges over the record. Bias of the Enquiry Officer disqualifies him to act as such and makes his report unacceptable.

31. However there is other facet of the coin. Though charge-sheet was served upon the claimant, decision was taken to constitute a domestic inquiry, Enquiry Officer was appointed, who wrote letters to the claimant to join the inquiry proceedings and on his non-participation the claimant was allegedly proceeded ex-parte, yet the management took stand in its written statement as well as during course of adjudication that services of the claimant were not terminated since he had abandoned the job. During the course of arguments Shri Agnihotri was called upon to explain as to whether the management presents it to be a case of no inquiry or a defective inquiry. He boldly explains that after receipt of report of the Enquiry Officer notice of proposed punishment was sent to the claimant but no order of any sort was passed against him. He refuted that order Ex.MW1/W2, which imposes punishment of dismissal from service on the claimant, was signed by the Chairman of the management. Signature, which appears at the end of the said order, on comparison from signature appearing on notice of the

proposed punishment, proved as Ex.WW1/M2, is found to be of the Chairman of the management. However the management disapproves of act of awarding punishment of dismissal to the claimant. Since the management claims that no punishment was awarded to the claimant, under these circumstances the Tribunal cannot coin a case for the management to the effect that punishment of dismissal was awarded to the claimant. As per the case projected by the management, no punishment was awarded to the claimant despite the fact that an inquiry was conducted and findings were recorded against him.

32. An employer may exercise his discretion to punish his employee when the latter commits a misconduct. For exercise of this discretion, the employer had to serve a charge-sheet to offer an opportunity to the employee to make a statement of defence. When charges are refuted by the employee, the employer may exercise his discretion to punish the former. The Punishing Authority may conduct the inquiry himself or deligate his authority to a subordinate officer. When Punishing Authority appoints an Enquiry Officer, the latter conducts the inquiry and submits his report to the Disciplinary Authority. On concurrence with the report of the Enquiry Officer, the Disciplinary Authority may award punishment to the delinquent employee. Thus an inquiry culminate either into exoneration of the employee or his punishment. When the employee is awarded punishment of dismissal or some lesser punishment, he may assail the same before the industrial adjudicator. In case the Disciplinary Authority opts not to award any punishment to the delinquent employee, issues relating to commission of misconduct and virus of the inquiry become redundant. Considering these propositions it was announced by the Tribunal that the issues relating to the commission of the misconduct and virus of the inquiry became redundant, *vide* order dated 17.4.2012. As such the aforesaid issues are answered accordingly.

### Issue No. 3

33. Shri Agnihotri argued that the claimant had abandoned the job. According to him, in such a situation the claimant is deemed to have ceased to be an employee of the management. Shri Rakesh Kumar, authorized representative, disputes the said proposition of facts. In order to adjudicate the controversy, it would be expedient to know as to what words "abandon" and "abandonment" mean. Ordinarily, the word 'abandon' does not mean 'merely leave, 'but'leaving completely and finally.' Word "abandonment" would indicate that it has a connotation of finality, which would mean relinquishment or extinguishment of a right, giving up of something absolutely, giving up with an intent of never claiming a right or interest, to renounce or forsake utterly. In order to constitute on "abandonment" there must be a total or



complete giving up of duties, so as to indicate an intention not to resume the same. Abandonment must be total and under circumstances which clearly indicate an absolute relinquishment. A failure to perform duties pertaining to an office must be with an actual or imputed intention on the part of the officer to abandon and relinquish the office.

34. Abandonment is a voluntary positive Act. A man must expressly say that he gives up his right. If he remains quiet, it cannot be said that he is forsaking his title to property or his interest therein. An office is abandoned by ceasing to perform its duties. A temporary absence is not, ordinarily sufficient to constitute an abandonment of an office. A mere absence of a workman from duty can not be treated as an abandonment of service. Abandonment or relinquishment of service is always a question of intention and normally, such an intention can not be attributed to an employee without adequate evidence is that behalf. However, the "intention" may be inferred from the acts and conduct of the party. The question as to whether the job, in fact has been abandoned or not, is a question of fact which is to be determined in the light of the surrounding circumstances of each case.

35. On turning to facts it came to light that show cause notice Ex.WW1/M1 was served on the claimant by the management. When this document was put to the claimant during the course of his cross examination, he admitted receipt of this notice. When this document is scanned, it came to light that it was received by the claimant on 27.12.2002. As per the case projected by the management, the claimant abandoned his job w.e.f. 20.12.2002. No explanation is offered as to how this notice was received by the claimant on 27.12.2002 personally. It seems that this memo was handed over to claimant on 27.12.2002. When he visited the office of the management. The claimant explains that he made a reply to this memo, which reply is Ex. WW1/12. During the course of his cross-examination the management had not made any attempt to dispute genuineness of Ex. WW1/12. When contents of Ex. WW1/12 as perused, it came to light that the claimant detailed therein that he had been attending his duties since 20.12.2002 but had not been allowed to resume the same. I have no hesitation to conclude that till 27.12.2002 the claimant had been visiting the office of the management to resume his duties.

36. On receipt of letter Ex. WW1/M3 the claimant wrote Ex. WW1/2 to the management on 7.3.2003. This document makes it apparent that the claimant disputes allegations of leaving duty without permission on 19.12.2002 and remaining absent from duty since 20.12.2002 till the date of issue of the charge-sheet on 20.1.2003. He highlights therein that he reported for his duties on 21.12.2002 but was not allowed to resume the same. In

respect of initiation of domestic inquiry, he clarified that conciliation proceedings were going on and the inquiry proceedings have been initiated to take revenge. Thus these two documents make it clear that the claimant made his intention known to the management to the effect that he wants to resume his duties, but was not allowed to do so. It nowhere emerge out that the claimant abandoned the job and his intention to do so reflects out of his continued long absence.

37. Abandonment of job by the employee is comprehended in the expression "voluntary retirement" used in the definition of term retrenchment, enacted by section 2(oo) of the Industrial Disputes Act, 1947 (in short the Act). In such cases, the determination of the contract of employment must have been brought about voluntary abandonment of job. An inference that an employee had abandoned or relinquished his job is not easily drawn unless from the length of absence and from surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon his service. Reference can be made to the precedents in *Bachingham and Carnic Co. Ltd.* (1963 (2) LLJ 638) and *G.T. Lad* (1979 Lab. I.C. 290).

38. Question for consideration would be as to whether the management could establish that the claimant intended to abandon his job? As emerge out of Ex. WW1/12, the claimant had been approaching the management daily but was not allowed to resume his duties. Same proposition emerge out of the letter dated 7.3.2003, proved as Ex. WW1/12. When this letter was written by the claimant by that time the management had served a charge-sheet on the claimant and the latter had approached the Conciliation Officer claiming that by not allowing him to resume his duties his services were terminated by the management. Thus two different stands were taken by the parties on alleged absence of the claimant from service w.e.f. 20.12.2002. On that date the management alleged that the claimant was absent from duties in an unauthorized manner and served him with a charge-sheet. The management may punish an employee for his misconduct but cannot punish an ex-employee. Evidently on the date of service of charge-sheet the claimant was treated to be an employee by the management. It was not claimed that he had abandoned his service, on being absent in an unauthorized manner. Thus it is evident that till service of charge-sheet and appointment of Enquiry Officer the claimant was treated to be an employee by the management.

39. Ex. WW1/12 projects the misconduct committed by the claimant on 19.12.2002. As emerge out of the contents of that letter the claimant was found standing at Mehram Nagar market by Shri Dinesh Singh at 6.45 P.M. that day. Claimant explains that he had gone there to have his pack

of dinner. According to him, he was to report for his duties at hanger at 7.15 P.M. He admits to be on duty at cargo terminal from 5.30 P.M. to 7.00 P.M. and was supposed to report for duty at 7.15 P.M. at hanger that night. Thus it is evident that the claimant left his duties and went to Mehram Nagar market without any permission. For that misconduct Shri Dinesh Singh has taken his pass and memo Ex. WW1/M1 was served upon him. For this misconduct he was not allowed to resume his duties, which action partakes character of termination of his services. I am constrained to conclude that the claimant never intended to abandon his service. The management cannot claim that by way of abandonment the claimant had voluntarily resigned from services.

40. Claimant left his duty place and reached bus stand near Mehram Nagar to board a bus for his residence on 19.12.2002. He was found there by Shri Dinesh Singh. He could not explain as to why he was present there, when he was supposed to be on duty at hanger, Indira Gandhi International Airport, New Delhi. Taking into consideration the misconduct referred above the management has not allowed him to resume his duties.

41. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, *e.g.*, for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

42. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes" (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill-health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

43. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

44. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that

one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

45. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25-B has further to show that he has worked during all the period he has been in the service of employer for 240 days in the year".

46. There is no dispute that the claimant was in continuous service of the management since 1994. He rendered continuous service of one year, unaccompanied by the provisions of section 25-B of the Act, in every calendar year. No notice or pay in lieu thereof and retrenchment compensation was given to him. As projected by the claimant his earned wages till 19.12.2002, were not paid. By not allowing him to join his duty his services were terminated by the management in violation of the provision of section 25-F of the Act. When services of an employee is terminated in contravention of the section 25-F of the Act, the normal rule is to order reinstatement of such an employee in service.

47. Since notice pay or pay in lieu thereof specifying reasons for retrenchment compensation was not paid to the claimant, his retrenchment is in violation of provisions of section 25-F of the Act. When order of termination of service is illegal or wrongful, the industrial adjudicator has to make a specific order of reinstatement of a workman. The problem confronting the industrial adjudicator is to promote its two objectives, security of an employee and protection against wrongful discharge

or dismissal on the one hand and industrial peace and harmony on the other, fully leading ultimately to the goal of maximum possible production. In dealing with these problems, an industrial adjudicator is to balance relevant factors without adopting legalistic and doctrinaire approach. The Tribunal has to examine through circumstances of each case to see whether reinstatement of dismissed employee is not inexpedient or improper. It has to take a decision in a spirit of fairness and justice following rules of justice and reason and after carefully examination of the facts and circumstances of the case. Past record of the employee, nature of his alleged present lapse and the grounds on which order of the management is set aside are also relevant factors for consideration. Normally, where a workman cannot be said to be a type of person whose presence as an employee is undesirable and not conducive to maintenance of industrial peace, it will not be fit case for depriving him relief of reinstatement and grant him compensation in lieu thereof. Law to this effect was laid by the Apex Court in *Ruby General Insurance Company Ltd.* [1970(1) LLJ 63] and *Management of Monghyr Factory of ITC Ltd., Monghyr* [1978 Lab. I.C. 1256]. Reference can also be made to *Western Indian Plywood Ltd.* [1982(1) LLJ 113] and *Delhi Cloth and General Mills Co. Ltd.* (1989 Lab. I.C. 490).

48. As projected above, termination of service of the claimant is violative of provisions of section 25F of the Act. However, it emerged over the record that the claimant left his duty on 19.12.2002 in an unauthorized manner and reached bus stand at Mehram Nagar to board a bus for his residence, where he was noticed by Shri Dinesh Singh at 6.45 P.M. that day. Since the claimant left his place of duty, which was at a strategic point, it emerged over the record that the claimant is a type of person whose presence as an employee is undesirable and not conducive to maintaining industrial peace. Therefore, I am of the considered opinion that relief of reinstatement in service is found not to be justified. Section 11A of the Act vests the industrial adjudicator with discretionary powers to give 'such other relief to the workman' in lieu of dismissal as circumstances of the case may require, where for some valid reasons, it considers that reinstatement with or without conditions will not be fair or proper.

49. When relief of reinstatement is not granted, in the alternative, the Tribunal may award compensation to the claimant in lieu of his reinstatement. No definite yardstick for measuring the quantum of compensation is available. In *S.S. Shetty* [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The Industrial Tribunal would have to take into account the terms and conditions of employment,

the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by Industrial Tribunal in the event of industrial disputes arising between the parties in future ... In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

50. A Divisional Bench of the Patna High Court in *B. Choudhary Vs. Presiding Officer, labour Court, Jamshedpur* (1983) Lab. I. 1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz (i) the back wages receivable; (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment; (v) capacity of the employer to pay and the nature of the employer's business; (vi) gainful employment in mitigation of damages; and; (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* (1989 Lab. I.C. 1887).

51. In *Assam Oil Co. Ltd.* [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In *Utkal Machinery Ltd.* [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the Industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months

and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State in *A.K. Roy* [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *Anil Kumar Chakarabarty* [1962 (II) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs. 50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P. Bhandari* [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M.K. Aggarwal* (1988 Lab. I.C. 380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In *Yashveer Singh* (1993 Lab., I.C. 44) the court directed payment of Rs. 75000/- in view of reinstatement with back wages. In *Naval Kishor* [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Sant Raj* [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Chandu Lal* (1985 Lab. I.C. 1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In *Ras Bihari* (1988 Lab. I.C. 107) a compensation of Rs. 65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In *V.V. Rao* (1991 Lab I.C. 1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

52. Claimant was serving as a security guard on 19.12.2002. He left his duty place and was found standing at the bus stand near Mehram Nagar to board a bus for his residence. He left the hanger unattended without any permission. It is evident that the claimant left the property of the management unattended, which act may cause loss to the property, besides reputation of the management. Such an employee loses confidence of his employer. An employee on whom confidence cannot be reposed is not found worth retention in service. All these facts persuade me to conclude that the claimant is not worthy for grant of an order of reinstatement in service. However considering his length of service and the fact that the management had terminated his service in an illegal manner and that he had to contest the case for about a decade, a compensation of Rs. 4 lacs is awarded to the claimant in lieu of reinstatement in service. An award is, accordingly, passed. It be sent to the appropriate Govt. for publication.

Dated : 02.12.2013

Dr. R.K. YADAV, Presiding Officer



नई दिल्ली, 3 जनवरी, 2014

का०आ० 279.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओ एन जी सी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (संदर्भ संख्या 101 का 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/01/2014 को प्राप्त हुआ था।

[सं एल-30012/104/1997-आई आर (सी-1)]  
एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 3rd January, 2014

**S.O. 279.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 101/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of ONGC and their workmen, received by the Central Government on 03/01/2014.

[No. L-30012/104/1997- IR (C-I)]  
M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Date: 14th October, 2013

Reference (CGITA) No. 101/2004  
Reference (ITC) No. 74/98 (Old)

1. The Chairman-cum-Managing Director,  
ONGC Ltd., Dehradun
  2. The Group General Manager (Project)  
ONGC Ltd., HLOY Road, Mehsana.
  3. The Regional Director,  
ONGC Ltd., WRBC,  
Makarpura Road, Vadodara-9 ...First Party
- And

Their Workman  
Shri Pinakinchandralal Bhatia  
Through the General Secretary,  
Gujarat Petroleum Employees Union,  
434/46, Gandhi Vas, Koba Road,  
Sabarmati, Ahmedabad (Gujarat) ...Second Party

For the First Party : Shri K.V. Gadhia, Advocate  
For the Second Party (Union) : None

#### AWARD

The Central Government/Ministry of Labour, New Delhi vide order no. L-30012/104/97-IR (C-I) dated 27.08.1998 under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the I.D. Act, 1947, referred the dispute to the Tribunal for adjudication on the terms of reference in the Schedule:

#### SCHEDULE

"Whether the action of the ONGC Ltd., Mehsana Project, Mehsana in terminating the services of Shri P.C. Bhatia, Asst. Technician (Electrical) OBG with effect from 01.08.1994 in the guise of voluntarily resignation by the employee under rule 14 (5) of ONGC leave rules, 1968 is legal and justified? If not, to what relief the concerned workman is entitled to?"

2. Upon notices the Union (S.P.) and the management (F.P.) appeared and submitted pleadings.

3. The 2nd Party (Union) as per statement of claim (Ext. 5) pleaded that the order of termination of Shri P.C. Bhatia is illegal and against the principles of natural justice and that services of workman was terminated on the ground of abandonment of service which is by way of victimising the workman P.C. Bhatia and is also against the ONGC's own rules and regulations. ONGC kept new persons at his post and even his juniors are retained. Relief was sought for declaring the termination of P.C. Bhatia illegal and unjustified and for reinstating him at his original place with full back wages and all other benefits with continuity of service.

4. The contention of the 1st party (ONGC Ltd.) as per written statement (Ext.8) is that the reference is not maintainable and the averments in para of S/c are denied. The case of the 1st party is that Shri P.C. Bhatia, Ex Asst. Technician (Electrical) was habitual absentee since joining the ONGC Ltd. and he used to remain absent so many times without permission/intimation or leave application and as per regulation of 14 (5) of ONGC Rules, and office order dated 18.05.1995 was issued treating Shri P.C. Bhatia as deemed to have resigned from his post of Asst. Technician (Electrical) with ONGC w.e.f. 01.08.1994 (AN) after expiry of 180 days of unauthorised absence. The 2nd Party is not entitled to any relief and the reference is liable to be dismissed with cost.

5. The 2nd Party (Union) submitted statement of claim on 07.10.1999 and the 1st party (ONGC) submitted written statement on 04.10.2000. Thereafter the case was running for leading evidence by the 2nd Party failed to lead evidence in spite of pendency of the case for evidence for more than a decade. The 2nd party executed Vakilpatra in favour of Shri Hitesh D. Kathrotia, Advocate on

12.12.2005 but even then no oral or documentary evidence adduced to support the statement of claim. The 1st Party files a pursis (Ext. 14) on 03.10.2013 for closing the case of the 2nd Party and it was seen also by Shri Hitesh D. Kathrotia, Advocate for the S.P. but all efforts went in vain. The 2nd Party P.C. Bhatia or the Union or the retained Lawyer did not take step to lead evidence.

6. So to my considered view, the 2nd Party has no interest to make contest in this case. Therefore, the terms of reference is answered in the affirmative in favour of the 1st Party (ONGC Ltd.). This reference is, therefore, dismissed. No order as to cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 3 जनवरी, 2014

का०आ० 280.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 578 का 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/01/2014 को प्राप्त हुआ था।

[सं० एल-11012/40/2002-आई आर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 3rd January, 2014

**S.O. 280.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 578/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Travel Corporation (India) Ltd. and their workmen, received by the Central Government on 03/01/2014.

[No. L-11012/40/2002- IR (C-I)]

M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Dated: 4th September, 2013

Reference (C.G.I.T.A) No. 578 of 2004

Reference I.T.C. No. 52 of 2003 (old)

1. Travel Corporation (India) Ltd.  
Ushadeep Building,  
Near Navrangpura Rly Crossing,  
Navrangpura, Ahmedabad
2. M/s. Thomas Kook India Ltd.  
Sakar-2, 2nd Floor,  
Near Income Tax Circle,  
Navrangpura, Ahmedabad. ....First Party

And

Their Workmen  
Harishbhai Krishanlal Shah,  
A-1/8 Oshan Park,  
Near Nehrunagar char rasta,  
S.M. Road,  
Ahmedabad-380015 .....Second Party

For the 1st Party : Shri Nalin U. Bhatt, Advocate

For the 2nd Party : Shri Amrish Patel, Advocate

#### AWARD

The Central Government/Ministry of Labour, New Delhi by its order No. L-11012/40/2002 I.R. (C-1) dated 07.11.2003, referred the dispute under Cl.(d) sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947 for adjudication to Industrial Tribunal, Ahmedabad as per terms of reference in the Schedule:

#### SCHEDULE

"Whether the action of Travel Corporation (India) Ltd. in terminating the service of the workman Shri Harishbhai K. Shah w.e.f. 15.05.2000 is legal, justified and proper? If not, then to what relief the concerned workman is entitled to"

2. The parties appeared and filed pleadings—statement of claim (Ext.4) by the workmen 2nd Party and written statement (Ext.6) by the 1st Party.

3. The case of the workman Harishbhai K. Shah as per statement of claim is that he worked in the 1st party company for 15 years with clean service record and no any notice memo or warning letter was issued to him except the notice dated 06.12.1999 by which he was put under suspension by show cause notice cum suspension order. The allegation against him was false and concocted and created by the officers of the company. His brother in law Shri Shrikantbhai Shah was working as area Manager and after his retirement Nayan Shah (complainant), Ratilal Shah and Adil Bajirao started making false and absurd allegation of taking commission. He was protesting against such action of the above officials. He filed complain to the Managing Director of the company. But thereafter instead of taking any action against those officials, false allegations were created and illegal departmental enquiry was held against him. The E.O. &

P.O. all were biased the E.O. on false and fabricated charges held him guilty to the charges levelled and enquiry held against the laid down principles of natural Justice. No opportunity was given to him and the Disciplinary Authority by its punishment order dismissed him w.e.f. 15.05.2000 and he was victimised since he had filed complaint against above officials. Due to illegal action of the company he and his family has suffered much and remained unemployed. The action of his dismissal for services is unjust, unfair and also acts of unfair labour practice. On these scores prayer is for declaring his order of dismissal illegal and to set aside the order of his dismissal and for reinstatement with full back wages with interest and cost of Rs. 10,000/- and to grant any other relief to which he is found entitled.

4. As against this the case of the 1st Party T.C. (India) Ltd. as per W.s is that the workman Harishbhai was involved in serious misconduct which was detrimental to the rule and regulations of the company and so he was suspended through show cause notice cum suspension order and charges were served on him and domestic enquiry was conducted following laid down principles of natural Justice and sufficient opportunity was granted to the 2nd Party workman to defend himself in enquiry proceeding and the allegation under the charges were proved in enquiry and E.O. submitted enquiry report and the Disciplinary Authority rightly dismissed him from the service of the company. So the 2nd Party workman is not entitled to any relief and the reference is fit to be dismissed.

5. The workman (2nd Party) by filling a pursis at Ext. 11 challenged the validity, correctness and propriety of the domestic enquiry held against him and prayed to decide the preliminary issue of propriety of the domestic enquiry. Thereafter the preliminary point of validity or otherwise of the domestic enquiry held against the delinquent workmen Harishbhai was taken up and evidence were adduced by both parties and examining witness and a detailed order was passed at Ext. 13 by then Central Industrial Tribunal, Ahmedabad who was in session of this case holding that the departmental enquiry held against the charge sheeted workmen Shri Harishbhai K. Shah from 17.01.2000 to 17.04.2000 are held totally against the laid down principles of natural Justice and no reasonable opportunity was granted to the workman to defend himself and so the domestic enquiry is illegal, improper against the principles of natural Justice and thus enquiry vitiated.

6. It is also pertinent to mention that opportunity was given to the 1st Party company to justify its action so taken against the workman by conducting fresh enquiry and leading evidence before the tribunal by grant of permission on 23.07.2010. but the 1st Party company failed to conduct enquiry before the Tribunal for justifying

its action taken against the delinquent and has not proved the charge against the workman.

7. Now the following points are taken for determination in this case:

#### POINTS

- (i) Whether the reference is maintainable?
- (ii) Has the 2nd party (workman) valid cause of action?
- (iii) Whether the 1st Party company has justified its action as to dismissal of the workman w.e.f. 15.05.2000 from the services of the company.
- (iv) What reliefs the workman is entitled to?
- (v) What orders are to be passed?

#### FINDINGS

8. **Points No. (iii):**—Since after vitiating of the enquiry held by the 1st Party against delinquent workman as per order of the Tribunal dated 23.07.2010 (at Ext.13) the 1st Party sought for permission for adducing the evidence of the witnesses to prove the charge levelled against the delinquent (2nd Party) but the 1st Party could not conduct enquiry before the Tribunal in spite of sufficient opportunity granted to the 1st Party. Eventually a pursis at Ext. 16 was filed by the 2nd Party workman dated 12.03.2012 for closing the stage of oral evidence of the 1st Party company and its copy was given to Shri N.U. Bhatt, Advocate of the 1st Party company and it was endorsed on Ext. 16 by Shri N.U. Bhatt, Advocate— "As there is no witness available to depose I have no objection if 1st party's evidence is closed". Then order was passed below Ext.16 the right of the 1st Party's evidence is closed. Thereafter the 2nd Party workman Harish K. Shah filed his affidavit examination in chief at Ext. 17 stating therein that action of dismissal is completely on false and fabricated charges and he has been victimised and that 1st party's action of his dismissal is unjust, unfair and an act of unfair labour practice and that since now he has completed aged of sixty year on 02.12.2007 and he remained unemployed, so he is entitled for back wages with all allowances till his completing age of sixty years. The workmen Harishbhai was cross examined on his affidavit statement by 1st Party's lawyer Shri Nalin U. Bhatt. It has come that 1st Party No. 1 Travel Corporation (India) Ltd. has now merged with Thomas Cook (India) Ltd. (1st Party No. 2). He denied that he has established his own travel agency and is earning. It has come that he remained unemployed and his brother is maintaining him and his family. It has also come that he is suffering from liver disease and so he be compensated in this case.

9. On behalf of the 2nd Party workman it has been argued by Shri Amrish Patel, advocate that dismissal of the

workman Harish K. Shah is unjustified and improper and a false and fabricated charge were created against him by the 1st Party company and as per colourable exercises of power and unfair labour practice on part of the 1st Party company the workman was victimised to loose bread earning from the service whereas service carrier of the workman was unblemished and since workman crossed the age of retirement so he is entitled for full back wages and consequential benefit till the age he completed sixty.

10. On the other hand, Shri N.U. Bhatt, advocate for the 1st Party company argued that charges against the workman is of very serious nature as he assaulted to officials as co-worker of the company and also gave out threats with dire consequences and Naren Shah and other co-worker filed written complaint against Harishbhai K. Shah. He further pointed out that Harishbhai completed age of retirements in December, 2007 and so there is no question of reinstatement. He further argued that question of payment of full back wages till his retirement will be justified or not this aspect has to be examined.

11. Upon consideration of the facts and circumstances of the case I am of the view that the 1st party company has not able to justify its action in awarding punishment of dismissal from the services. Since after vitiating of the domestic enquiry and the 1st Party company failing in conducting fresh enquiry before the Tribunal there remain no fresh materials on the record to rely for justifying the action of the 1st Party company. There is no other alternative other than to set aside the order of dismissal dated 15.05.2000 of the workman Harishbhai K. Shah. So, the point No. iii is decided against the 1st Party company.

12. **Issue No. iv :**—Shri N.U. Bhatt, advocate for the 1st Party has cited six case laws in support of his arguments that charge was serious against the workman and even if the 1st Party failed to justify the action as to dismissal of workman on the charges. He (the workman) cannot claim back wages and consequential benefits. He has cited case law—(1) 2001 LLR 1171 Bombay H.C. (Breach Candy Hospital vs. Babulal Pardesi, (2) 1990 1CLR 875 SC. (workman of Fritz Werner (P) Ltd. vs. Bharat Fritz Werner (P) Ltd., (3) 2000 (84) F.L.R. 157 Bombay H.C. (Bajaj Auto Ltd. Vs. Devisan), 4. 2000(1) LLJ 424 S.C. (Mehendra Nissan Ltd. Vs. M.P. Siddappaa (5) 2000 CLR 380 Madras H.C. (Vanmalika Vs. Sundaram Textile, and (6) 1988(2) CLR 146 M.P. High Court (Central India Floor Mills Bhopal Vs. Mohd. Ishag Sagir). Those case Laws are good laws on proof of misconduct under the charge levelled. But in the instant case since the domestic enquiry has vitiated, there remain no material to rely on the record and the 1st Party employer also failed to conduct fresh enquiry before the Tribunal for justifying its action so taken. So, without having any material on the record the misconducts under the charge has not

been proved and so the case laws relied upon by Shri N.U. Bhatt (Supra) are not applicable in the instant case. More so no police complaint filed against the workman regarding the alleged occurrence of assault, abuse etc. So I find that the 2nd Party workman has suffered lot for the unproved charges levelled against him. However, considering the maxim of no work no pay I find that it would not been proper to allow full wages to the 2nd Party workman. Payment as to 60% of back wages to the workman (2nd Party with consequential benefits of increment if any had he been served till reaching the age of superannuation are allowed. This point is accordingly answered in favour of the 2nd Party workman.

13. **Issue No. i, ii:**—In view of the findings in the foregoing paras as to point No. iii and iv I further find and hold that the reference is maintainable and the 2nd Party workman has valid cause of action.

14. **Issue No. v:**—As per above findings, the reference is allowed. The dismissal order of the 1st Party w.e.f. 15.05.2000 is set aside. The 1st Party No. 2 Thomas Cook (India) Ltd. who has taken all assets and liability of the 1st Party No. 1 T.C. (I) Ltd. since after its merger with 1st Party No. 2 is directed to pay back wages of 60% w.e.f. 15.05.2000 till retirement age of the workman Harishbhai K. Shah with consequential benefits. The 1st Party No. 2 is also directed to pay Rs. 10,000/- towards cost to the 2nd Party workman.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 3 जनवरी, 2014

**कांआ 281.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (31/2009) प्रकाशित करती है जो केन्द्रीय सरकार को 01/01/2014 को प्राप्त हुआ था।

[सं एल-12011/31/2009-आईआर(बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 3rd January, 2014

**S.O. 281.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the management of Canara Bank and their workman, received by the Central Government on 01/01/2014.

[No. L-12011/31/2009-IR(B-II)]

RAVI KUMAR, Section Officer



**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
BANGALORE**

Dated : 10th April, 2013

**Present** : SHRI S.N. NAVALGUND,  
Presiding Officer**CR No. 31/2009****I Party**The Assistant Secretary,  
Canara Bank Staff Union,  
Santhrupthi, Near  
Adharsha High School,  
Karmar, PO Padil,  
Mangalore-575007.**II Party**The Dy. General Manager,  
Canara Bank, Circle Office,  
IMA Building,  
Bailappannavaranganagar,  
Hubli-580029.**Appearances**I Party : Shri K.V. Sathyanaranaya  
AdvocateII Party : Shri T.R. K. Prasad  
Advocate**AWARD**

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section (1) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute *vide* Order No. L-12011/31/2009-IR(B-II) dated 18.06.2009 for adjudication on the following schedule:

**SCHEDULE**

"Whether the action of the management of Canara Bank, Hubli in imposing the penalty of 'Bringing down to lower stage in the scale of pay by two stages for a period of four years with cumulative effect' on Shri Mehboob Pasha (72399) is legal and justified. What relief the concerned workman is entitled to?"

2. On receipt of the reference registering it in CR 31/2009 when notices were issued to both the sides they entered their appearance through their respective advocate and I party filed the claim statement and II Party its counter statement.

After completion of pleadings when the matter was at the stage of Evidence on Preliminary Issue touching the fairness of the Domestic Enquiry on 10.04.2013 a Joint Memo of Settlement signed by the General Secretary of the I Party Union, workman covered in the reference and the Assistant General Manager of the II Party came to be filed. The same was read over and explained to the General Secretary of the I Party Union, workman covered in the reference and Shri Bipin, Law Officer of the II Party who

was authorised by the Assistant General Manager to represent him and to affirm the contents and execution of the Joint Memo all of them admitted the same as True and Correct. Accordingly, the said Joint Memo came to be accepted and the proceedings closed. In view of the Joint Memo by the parties, I pass the following Order:

**ORDER**

In terms of the settlement arrived at by the parties the Punishment imposed by the Disciplinary Authority against Shri Mehboob Pasha Bringing Down to Lower Stage in the Scale of Pay by two Stages for a period of four years with cumulative effect is now modified by Bringing Down to Lower Stage in the Scale of Pay by two Stages from the date of punishment order dated 29.11.2007.

(Dictated to UDC, transcribed by him, corrected and signed by me on 10th April, 2013).

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 3 जनवरी, 2014

कांआ 282.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई के पंचाट (98/2011) प्रकाशित करती है जो केन्द्रीय सरकार को 01/01/2014 को प्राप्त हुआ था।

[सं एल-12012/57/2011-आईआर(बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 3rd January, 2014

**S.O. 282.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 98/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Bank and their workman, received by the Central Government on 01/01/2014.

[No. L-12012/57/2011-IR(B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Tuesday, the 19th November, 2013

**Present** : K.P. PRASANNA KUMARI,  
Presiding Officer

**Industrial Dispute No. 98/2011**

(In the matter of the dispute for adjudication under clause (d) of the sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

**BETWEEN**

Shri M. Kalaiarasan : 1st Party/Petitioner

**AND**

The General Manager/  
Circle Head  
Indian Bank Circle Office  
No. 359, Najappa Road,  
Coimbatore-641018 : 2nd Party/Respondent

**Appearance:**

For the 1st Party/ : Shri J. Thomas Jeyaprabakaran,  
Petitioner Union Authorized Representative

For the 2nd Party/ : M/s T.S. Gopalan & Co. Advocates  
Management

**AWARD**

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-12012/57/2011-IR(B-II) dated 23.11.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the Indian Bank management, Coimbatore in imposing the punishment on Sri M. Kalaiarasan, Sub-Staff of Erode, "Be Compulsorily Retired" *vide* order dated 05.12.2008 is justified? If not, what relief the workman is entitled to?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID 98/2011 and issued notice to both sides. The petitioner appeared through authorized representative and the respondent through its counsel and filed their claim and counter statement respectively. After Counter Statement was filed the petitioner has filed a rejoinder also.

3. The case of the petitioner in brief is as below:

The petitioner was working as Sub-Staff with the Respondent in its Erode Branch. The Respondent has alleged that on 25.10.2007, while inspection of the currency chest was going on, the petitioner who was helping the inspection had removed Rs. 1,00,000 bundle of the denomination of Rs. 100 and managed to put it into the corner of the vault in between the wall and the currency bins. An enquiry was conducted against the petitioner. It was found in the enquiry that the petitioner had

admitted that he had kicked the bundle of currency notes towards the corner. The Enquiry Officer had found that the petitioner had made a confession of his dishonest conduct to the Inspector in the presence of other Officers and on the basis of this finding the punishment of Compulsory Retirement was imposed on the petitioner. The petitioner did not commit the misconduct alleged against him. The punishment imposed on the petitioner is without any justification. The Respondent is to be directed to reinstate the petitioner in service with continuity of service with back wages and other attendant benefits.

4. The respondent has filed Counter Statement contending as follows:

The Respondent Bank is authorized by the Reserve Bank to notify certain branches to set up Currency Chest on behalf of it. The Erode Branch is one where the currency chest has been set up. It is controlled by the officials of the Respondent Bank. The Inspectors of the Bank used to carry out periodical inspection of the currency chest. On 25.10.2007 Mahendran, the Manager of the Inspection Centre, Coimbatore had been to the currency chest attached to Erode Branch for inspection. While verifying the bins containing the currency bundles, in the afternoon there was a power failure. At that time the counting of Bin No. 232 was completed. After 10 minutes power supply was resumed and the counting operations were continued. Mahendran noticed that the petitioner who was helping the inspection was behaving in an unusual manner and was looking at the gap between the bin and the wall. On looking at the gap he noticed a 100 Rs. Bundle lying between the bin and the wall. He directed the petitioner to pick up the bundle. On questioning the petitioner he stated that the bundle might have fallen from the bin. On search of the bins it was noticed that one bundle in the second row of Bin No. 232 was missing. The bundle could have been removed only. The bundle was placed back in Bin No. 232. After completion of the counting of the remaining bins, by 06.30 PM when the petitioner was persistently questioned he admitted that he had removed the bundle and kicked it to the gap between the wall and the bins. A report regarding the incident was given by Mahendran on 27.10.2007. The Manager of the Erode Branch of the Bank also gave a report to the Circle Office, Coimbatore. A Show Cause Notice was issued to the petitioner regarding the incident. Later a Charge Memo was issued to him. Since his reply was not satisfactory enquiry was conducted against the petitioner. The Enquiry

Officer found that the first charge was proved while the second charge was not proved. The Disciplinary Authority held that both charges are proved. After issuing a Show Cause Notice to the petitioner and on hearing him personally the punishment of Compulsory Retirement was imposed on the petitioner. The petitioner had done the act with malice and guilty intention. The punishment of Compulsory Retirement was imposed because of the serious misconduct of the petitioner. The petitioner is not entitled to any relief.

5. The petitioner had filed a rejoinder reiterating the case in the petition.

6. The evidence in the case consists of oral evidence of the petitioner examined as WW1 and the documents marked as Exs. W1 to Exs. W18 and Exs. M1 to Exs. M3. No oral evidence was adduced on the side of the Respondent.

7. The Points for consideration are:

- (i) Whether there is any justification for the Respondent in terminating the service of the petitioner by imposing the punishment of Compulsory Retirement?
- (ii) Whether the petitioner is entitled to the relief of reinstatement in service?

#### The points

8. The petitioner was working as Sub-Staff under the Respondent Bank. On 25.10.2007 the date on which the incident which led to the termination of the services of the petitioner by imposing punishment of Compulsory Retirement had occurred he was working at the Erode Branch of the Respondent Bank.

9. At the Erode Branch of the Reserve Bank of India, a currency chest has been set up on behalf of the Reserve Bank. The chest will be under the control of a Bank Officer. On 25.10.2007 Mahendran, Manager, Inspection Centre of Coimbatore had been to the currency chest attached to the Branch for inspection. It seems, while inspections was going on by 03.15 PM, there was a power failure by which time counting of cash Bin No. 232 was completed. Power supply was resumed after 10 minutes and counting operations were continued. The Inspector noticed a bundle of currency in between the gap between the wall and the bin. According to the Respondent the Inspector had looked at the gap since the petitioner who was assisting him was behaving in an unusual manner and was looking at the gap. It is an admitted fact that a bundle of currency of Rs. 1,00,000/- of the denominations of Rs. 100/- was retrieved from the gap. The case of the Respondent is that even though the petitioner had not immediately admitted that he has got anything to do with the currency bundle

found at the gap, he has subsequently, on the same evening, on persistent questioning, had admitted that he himself had managed to kick the bundle to the gap. The petitioner was departmentally proceeded, was found guilty and punishment was imposed on him.

10. There is no case for the petitioner that the enquiry was not conducted in a fair and proper manner. The petitioner as well as the Respondent are relying upon the evidence adduced at the time of the enquiry to substantiate their respective cases.

11. The attempt of the authorized representative of the petitioner has been to make out that the case of the Respondent that the petitioner has confessed to having kicked the bundle to the gap in between the wall and the currency bins is not at all believable. In this respect he has referred to the various documents and the depositions of the witnesses before the Enquiry Officer. Before advert to these aspects referred to by the authorized representative the nature of the charge that was framed against the petitioner in the departmental enquiry is to be seen. The charges are as below:

- (i) On 25.10.2007, while inspection of the currency chest was going on, by about 03.15 PM there was a total power failure for about 10 minutes. When the power supply resumed the inspector of branches and the Officer-in-Charge of the Currency Chest Erode notice Rs. 100/- denomination currency bundle (10 sections amounting to Rs. 1,00,000/-) on the floor inside the gap between the wall and the bin cabin. On enquiry by the Officer-in-charge, Currency Chest, Erode in the presence of inspecting official from the Inspection Centre, the Assistant Manager and other staff members present in the Currency Chest you have admitted having intentionally taken the currency bundle from the bin and pushed the currency bundle between the wall and the bin and requested to apologize for the act.
- (ii) You have done the act of removing one Rs. 100/- denomination currency bundle valued Rs. 1,00,000/- from Bin No. 232 and kept it inside the gap between the wall and the Bin Cabin with fraudulent intention and knowing that the CCTV camera would not cover the area where you have done the act and kept the currency bundle.

The Enquiry Officer found that Charge No. 1 is proved Regarding Charge No. 2 he found that *"though the intention of CSE for removing the bundle of Rs. 100/- denomination from Bin No. 232 and throwing it in between the wall and Bin Cabin is proved, that CSE has removed the bundle*

*of Rs. 100/- denomination from Bin No. 232 knowingly that CCTV would not cover bin 232 is not proved."*

12. Page-47 typed set of documents filed by the petitioner and is part of Ex.W6, the copy of the enquiry proceedings against the petitioner is a copy of the report given by the Inspector of the inspection centre who have been deputed to count the cash balance in the Currency Chest of the Reserve Bank of India attached to Erode branch of the Indian Bank. As seen from this there was a cash balance of Rs. 460/- crores in the chest on 25.10.2007 on which date the inspection was made. There are 300 bins in the chest. As seen from the report, two Officers, six clerks and two sub-staffs have been assisting the Inspector on the day. Apart from counting of the cash itself, counting of soiled notes kept apart also seem to have taken place on the same day. The report marked as MEX-1 in the enquiry proceedings seems to have been given by the Inspector in the wake of the fact that a bundle of Rs. 1.00 lakh of Rs. 100/- denomination was found at a corner of the currency chest in the gap between the wall and the cash bins.

13. The authorized representative of the petitioner has been pointing out that in spite of crores of rupees having been retained in the currency chest, the chest was managed, maintained and operated in a very negligent manner. It is the case of the Respondent itself that though a CC Camera is installed in the currency chest, the eyes of the camera will not reach the entire portion of the chest. Admittedly, no alternate arrangements have been made inside the chest in case of a power failure. The very case of the Respondent is that on 25.10.2007, while inspection was going on after lunch a power failure had occurred and the inspection team had to stop the work and come out. They have to wait till the power supply was resumed for starting the work. The emergency light installed inside the chest was not in working condition. On 30.10.2007, a preliminary report was given regarding the incident after conducting the enquiry. This is also available in the file of the enquiry proceedings (Page 51-53 of typed set of the petitioner's documents). At the conclusion part of the report the Investigation Officer has found fault with the Officer-in-charge for the improprieties and irregularities of the chest. He has reported that the Officer has not kept the emergency lights in working condition at the Chest, he has not learnt the operations of and retrieval of information of recordings of CCTV, he was not aware of the coverage of the CCTV Cameras till the alleged incident occurred and was not having proper control on the Currency Chest as the staff were found not marking in the Attendance Register. He has of course reported about the alleged incident also which will be referred to later. It is rather surprising that in spite of Rs. 460/- crore rupees having been kept in the

Currency Chest such was the attitude of the officials who are supposed to guard this money.

14. It is being pointed by the representative of the petitioner that in spite of these latches, a person, even if thinks of taking some amount of money in the currency chest to outside un-noticed this would not have been possible. He has referred to the method of operation of the currency chest. The chest is having dual lock and key and the two keys are in the custody of two officers who are to operate it jointly. Each and every bin in which currencies are kept in the chest also will be having dual lock and key. The currency chest is guarded 24 hours by the police and anyone who will be going inside and coming out of the chest will be frisked by the police. According to him a person who is inside the chest could not even dream of taking out a portion of the currency out from inside the chest. These details regarding the operation of the chest given by the authorized representative are not controverted by the respondent also.

15. There is no case for the respondent that anybody inside the currency chest who was helping Sri Mahendran, the inspector had seen the petitioner doing the act of removing the currency bundle, putting it down or pushing it to the gap, as is the case. The charge itself is that Mahendran noticed the behaviour of the petitioner to be unusual in nature, that he found the petitioner looking towards the gap frequently, he too looked at the gap and found the currency bundle and retrieve it. The case is that on subsequent questioning the petitioner has admitted to have pushed the bundle towards the gap. The very finding of the enquiring authority is mainly based on the fact that there was an admission on the part of the petitioner that he has pushed the bundle. He has reasoned that Mahendran, the Inspector has no reason to be inimical towards the petitioner and so there was no reason for him to give false evidence against the petitioner, to the detriment of the petitioner. Before coming to the question of admission said to have been made by the petitioner, the facts that have come out regarding the circumstances under which the bundle was retrieved should be referred to. It has been pointed out by the Authorized Representative this very evidence is filled with contradictions. He has argued that in the position in which the petitioner was at the time when the power failed it would not have been possible for him to do the alleged act, that is the act of pushing the bundle. It has also been pointed out by him that there was every possibility of the bundle having fallen out of the bin, slid through the gap in between the wall and the bin cabinet without the notice of anyone. The Disciplinary Authority seems to have taken into consideration, the argument advanced on behalf of the management that the gap between the wall and the bin is just 6.5 metres and a bundle of Rs. 1.00 lakh of Rs. 100/- denomination falling down in



the normal course of handling, reaching upto the gap is remote. However, the Authorized Representative has demonstrated before me with a Rs. 1.00 lakh bundle of Rs. 100/- denomination that the width and breadth of the bundle is such that there will be no difficulty for the bundle to slide down through such a gap.

16. It is clear from the evidence tendered before the enquiry authority that the incident occurred at the time when Bin No. 232 containing bundles of Rs. 100/- denominations were being verified. Sri Mahendran has deposed before the enquiring authority that by 3.15 PM power failed and immediately the Bin was locked and they have all come out of the vault room. After 10 minutes power resumed and verification work was continued. It was after verification of 5-6 bins, on resumption of work, he has noticed the unusual behavior of the petitioner. It was subsequently he has noticed the bundle lying at the floor in the gap. He has stated during his cross-examination that when the power failed verification of Bin No. 232 was going on and the petitioner who was assisting him was standing on the ladder. He was standing at a height of 5 ft. on a ladder of 10 ft. height. He has stated that the Officer-in-Charge, Sri Mathiazhagan, Asstt. manager, Sri Mohammad Iqbal and Clerk, Alagesan were present in the vault room within a radius of 5 ft. and they were attending the soiled notes. He has stated that Mohammad Iqbal was at his side at the time when power failed and the work was resumed after power supply was resumed. However, this evidence regarding the presence of Sri Mohammad Iqbal close by to him at the time of the verification is contrary to the letter given by him in writing. The letter is found along with the enquiry proceedings (page 47 and 48 of typed set of the petitioner). Regarding the incident he has written in the letter that immediately after the bundle was found out, he has requested the Officer-in-Charge to look into it. He has further stated that Alagesan who was verifying the soiled notes in the wooden case in the Strong Room also had come by that time. The claim of the presence of Mohammad Iqbal at the time of the incident has been very much attacked by the Authorized Representative. Suspicion regarding his claim of his presence at that time creeps in from his very evidence itself. He has been examined as MW 5 in the enquiry proceedings. MEX-5 (Page 55 of petitioner's typed set) is the letter given by Mohammad Iqbal regarding the incident. In the letter he has stated that it was Mr. Alagesan who has retrieved the bundle from the gap. During his cross-examination he has stated that both Alagesan and the Inspector had looked into the gap simultaneously and he did not see who took out the bundle. He then stated that subsequently Alagesan had told him that he took out the bundle. In the letter he has stated that the gap inside Bin No. 232 consequent to the missing of one bundle was found out by Alagesan. During

cross-examination he has stated that it was found out by the petitioner. Regarding the retrieving of the bundle Mahendran, the Inspector has got a different case. He has stated during his cross-examination that the bundle was taken out by the petitioner. On the basis of these contradictions it has been argued by the Authorized Representative that Mr. Mohammad Iqbal was not present at the time of verification at all, though he was supposed to be there. According to him it is to cover up this irregularity Mohammad Iqbal has been giving false version and creating stories. In this respect the Authorized Representative has referred to the evidence of other witnesses also. Only the Inspector and Mathiazhagan the Officer-in-Charge examined at MW 4 in the enquiry proceedings have stated about the presence of Mohammad Iqbal at that time. Referring to the letters given by the witnesses and the preliminary enquiry report given by the MW 3, it has been argued by the Defence Representative that there is no possibility of Mohammad Iqbal having been present at that time at all. I have already referred to the report of the Inspector in this respect. The Senior Manager of the Erode Branch of the Indian bank to which the Currency Chest is attached has given a report regarding the incident (Page 49 of the typed set of the petitioner). This report is given on the next day of the incident and is the earliest report available regarding the same. Though, it is a report given on the basis of information gathered from others, it assumes importance for the reason that it is the earliest one given after the incident. In this what is stated regarding the incident is that the Inspector was in the process of verifying the cash in the bins and Sri Kalaiarasan, the petitioner was with the inspecting official and assisting him in opening the bins and showing the bundles for verification. There is no reference to the presence of Mohammad Iqbal or any other official at the place of verification inside the chest. The preliminary report given by MW 3 in the enquiry proceedings (Page 51 to 53 of the typed set) also fortifies the suspicion regarding the presence of Mohammad Iqbal. It is to be borne in mind that the report was given on 30.10.2007, after getting report from all those involved, gathering all the information. In this report he has stated that Mohammad Iqbal had told him that himself, Mathiazhagan, Alagesan and Nagarajan were involved in the packing of soiled notes to be remitted to the RBI, on the day. Mathiazhagan who was questioned by him also has stated that Mahendran, the Inspector duly assisted by the petitioner was doing the verification. He has stated that on power failure all of the have come out and that when power was restored after 10 minutes Mohammad Iqbal, Alagesan, Nagarajan and himself continued the work of packing soiled notes and Mahendran, the Inspector and the petitioner had continued the cash balance verification. The evidence given by Mohammad Iqbal itself gives support to the

idea that he was not there. During cross-examination in the enquiry proceedings his claim is that normally, during inspection he attended the Counting Hall Supervision Work though on the particular day he was simultaneously attending the counting and inspection work. All the other witnesses other than Mahendran, Mathiazhagan and Mohammad Iqbal himself have stated that Mohammad Iqbal was not there at all. These variations in the evidence certainly affects the credence of the witness.

17. There is also the aspect that though CCTV was working the visual regarding the same was not made available at the time of the enquiry proceedings. The case of the Respondent is that the particular area at which the incident had happened was not covered by the camera and the incident itself would not be seen in the visual. The very case is that the petitioner was very much aware of this situation and this is what prompted him to resort to the act of removing the bundle and thrusting it to the corner by a kick. It is seen from the proceedings that the Defence Representative had made a request to make the visual available. However, it was not done stating that it could not be retrieved. If it could not be retrieved the very purpose of the installation of the camera would be defeated. The CC Camera is intended for contingencies including incidents of such kind and there was no justification in not making it available. What is claimed by Mohammad Iqbal is that a threat was made to the petitioner regarding making the visual of his alleged act available and it was accordingly he has made a confession of the incident but in his preliminary report Sri Thomas examined at MW3 has stated that even the Officer-in-Charge was not aware of the actual nature of the operations of the camera, that the camera will not reach the entire currency chest. Certainly, the monitor part of the CCTV will not be inside the currency chest but in the Manager's cabin and it is unlikely that the petitioner had knowledge of the details of the operation of the camera. The evidence in the enquiry proceedings reveal that some of the witnesses have seen the visuals of the CCTV on the particular day. What is stated is that people coming and going inside the vault can be seen but not the alleged act itself but if the visual was made available who all were present at the time of currency verification inside the chest could have been verified definitely.

18. As already stated nobody has seen the petitioner taking out the bundle, dropping it to the floor or kicking it towards the gap. No one has any knowledge as to how the bundle has reached the gap. It has been pointed out by the Defence Representative that there was every possibility of the bundle having slid down through the gap. It is clear from the evidence that Bin No. 232 from which the bundle was missing is the one close to the wall. The bin cabinet containing bins 229 to 234 is on the left side close to the wall. Between this cabinet and the

wall is the gap. Bin No. 232 is the fourth from the bottom and is at a height of 5 ft. As admitted by the witnesses, this bin cannot be reached from the floor. The petitioner was on a ladder assisting the verification of Bin No. 232 at that time when power failed. The gap in the Bin was at the back side and not in the front. As pointed out by the Authorized Representative the bundles from the back side of each bin will be taken out, verified and replaced. There is all likelihood that when power failed during such verification, a bundle which was being replaced was mistakenly placed at the area of the gap causing it to fall down. It is possible that on power failure in the vault nobody noticed the sliding down of the bundle in the hurry to come out of the dark and lock the vault.

19. The finding against the petitioner is on the basis of the admission that was allegedly made by him. The Enquiry Officer has found that the evidence given by the witnesses regarding the admission has to be accepted, and it is on the basis of admission allegedly made by the petitioner that the charge in this respect was found against him.

20. Before considering whether an admission was made by the petitioner or not, the argument advanced by the counsel for the Respondent that this Tribunal has no power to consider the question since the Enquiry Officer has already found that an admission was made has to be considered. Initially the counsel has referred to the decision of the Apex Court in Commissioner of Police, New Delhi Vs. Narendra Singh reported in 2006 3 LLN 104 where it was held that the bar against the admissibility of a confession contained in section 25 and 26 of the Evidence Act and 162 of the Code of Criminal Procedure is not applicable to departmental enquiry. Certainly, there can be no dispute about this dictum laid down by the Apex Court. The counsel has referred to the decision Kuldeep Singh Vs. State of Punjab and others Reported in 1996 10 SCC 659 in support of his argument that this Court cannot go into the question whether a confession was made by the petitioner or not. In this respect the counsel has referred to the observation of the Apex Court that "*It is not permissible for us to go into the question whether the confession made by the appellant is voluntary or not, once it has been accepted as voluntary by the Disciplinary Authority and the Appellate Authority*".

21. In the above case the Apex Court was considering the case of a Head Constable of Police in the service of the Punjab Government who was dismissed from service without holding an enquiry. It was alleged that the Head Constable has been indulging in activities prejudicial to the efficient functioning of the Police force, was mixing up with the extremists and had been supplying information relating to the Police Department to the extremists. The Disciplinary Authority invoked the Second Proviso of

Clause-2 of Article-311 of the Constitution of India and dispensed with the enquiry on the ground, that it is not practical to conduct an enquiry. The Disciplinary Authority and the Appellate Authority had found that during interrogation the Head Constable had admitted to have links with the extremists. The Disciplinary Authority, the Appellate Authority as well as the High Court had found that an admission was made by the Head Constable. It was in this context the Apex Court has held that it is not permissible to go the question whether the confession made was voluntary or not. On going through the above judgement it could be seen that the dictum laid down by the Apex Court was only that a confession made with the Police is admissible in departmental enquiries. Even then, as held by the Apex Court, the enquiring authority is to decide whether the confession was voluntary or not. The Apex Court has stated in this respect that *"in a departmental enquiry it would perhaps be permissible for the authorities to prove that the appellant did make such a confession/admission during the course of interrogation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not"*. In fact that main aspect that was considered in the above decision was whether dispensing with enquiry was proper or not.

22. A distinction is to be drawn between the present case and the case of Kuldeep Singh referred to above. The appellant Kuldeep Singh in the above case was a Police official and will not come under the definition of workman as defined in the Industrial Disputes Act Section 2(s) (ii) of the Industrial Disputes Act states that a person who is employed in the police service is not a workman. So in the above case, the Apex Court was not considering a dispute raised under the Industrial Disputes Act. Under the Industrial Disputes Act power is conferred on the Tribunal under Section-11A of the Act to re-appraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a workman, as held by the Apex Court in the decision Firestone Tyre and Rubber Co. of India Pvt. Ltd. Vs. Management and others and other cases reported in 1973 1 SCC 813. When the Tribunal is having such a power based on Section-11A of the Act it would be idle for the counsel for the Respondent to contend that once the enquiring authority has entered a finding regarding the alleged admission made by the petitioner it cannot be considered by this Tribunal at all. If so, it would be against the very spirit of Section-11A of the Act. It would be against the dictum laid down by the Apex Court in the Firestone case also. This Tribunal is competent to consider whether an admission was actually made and whether the admission is regarding the alleged act. Of course, if this Tribunal finds that there was an admission it will not be of consequence whether the admission was

made before the Police or anyone else. The argument advanced by the counsel in this respect is only to be rejected.

23. Now the question to be considered is whether the evidence given in the enquiry regarding the admission allegedly made by the petitioner can be accepted. The Inspector who was examined as MW1 in the enquiry proceedings has deposed that he has enquired the petitioner in the presence of the Officer-in-Charge and Mr. Mohammad Iqbal and the petitioner has admitted that he has pushed the bundle inside the gap with his leg when the power went off, that something happened beyond his control, that it is the first incident in his career and he may be foregiven. The same Inspector has stated during his cross-examination that the petitioner was standing on the ladder at a height of 5 ft. when the power went off. During examination he has stated that he has interrogated the petitioner by 06.30 PM on the same day after the counting was over and that it was in the presence of Mathiazhagan who was examined as MW4 and Mohammad Iqbal who was examined as MW5 in the enquiry proceedings. During his cross-examination he has reproduced the exact words said to have been stated by the petitioner by way of admission. The wording is *"this is the first time this has happened beyond my control. This type will never occur again so considering my family circumstances, please save me"*.

24. Mathiazhagan examined as MW4 also has stated the petitioner has admitted that he has done the act. The written statement given by this witness in the course of the enquiry has been marked and is available at Page-54 of the typed set of documents of the petitioner. In this statement he has stated that initially the petitioner had stated that when power went off, while closing the bin door the bundle might have fallen down but subsequently himself, Mohammad Iqbal and Inspector Mahendran had crossed the petitioner and he has stated that the bundle had fallen down and he had kicked it into the gap.

25. Mohammad Iqbal who was examined as MW5 has stated during his examination that by around 06.30 PM the petitioner was questioned in the presence of himself, Mathiazhagan, Alagesan and Nagarajan and the petitioner has admitted that due to mental aberration he had committed it and it is for the first time in his life.

26. The Enquiry Officer has depended entirely upon the evidence of three witnesses to come to a finding that the petitioner has given an admission of his guilt. The Enquiry Officer has especially referred to the fact that so far as Inspector Mahendran was concerned there was no reason for him to be on inimical terms with the petitioner and naturally there was no reason for him to give false evidence against the petitioner. However, the Enquiry Officer seems to have failed to find out the contradictions



in the evidence regarding the alleged admission made by the petitioner. As could be seen, the case of MW5 Mohammad Iqbal is that at that time when the petitioner allegedly made the admission, apart from himself, Inspector Mahendran, Mathiazhagan, Alagesan and Nagarajan also were present. Alagesan was examined as MW6 and Nagarajan was examined as MW7. However, these two witnesses examined by the Management did not support the case that an admission was made by the petitioner. During the enquiry proceedings three witnesses were examined on the part of the petitioner as defence witnesses. On going through their evidence it could be seen that these witnesses also were in the premises at the time of the incident and subsequently. Their evidence is totally against the case of admission put forth by the Management.

27. There is contradiction in the evidence given by Mahendran, Mathiazagan and Mohammad Iqbal even regarding the persons who were present at the time of the alleged admission. According to Mahendran and Mathiazhagan, these two and Mohammad Iqbal only were present at that time. However Mohammad Iqbal belies this case and states that Alagesan and Nagarajan also were present at that time.

28. Apart from the above are the facts brought forth through the evidence and the report given by the Branch Manager. The Branch Manager was not in the premises at the time of the incident or at the time of alleged admission, he having been on duty elsewhere. However, he has received telephonic information regarding the incident even before he came back to the branch. He was appraised of the incident also on his return. He has been examined as MW2. The report given by him regarding the incident was marked in the enquiry proceedings and is available in Page-49 of the typed set of documents of the petitioner. In his report to the Deputy General Manager given on the next day he has stated regarding the questioning of the petitioner regarding the incident.

What he has stated is that it was reported that the sub-staff was questioned immediately by the Inspector and the Officer-in-Charge and he has not accepted his responsibility for the incident, but on the other hand he has stated that the bundle might have fallen in the normal course of handling. He has further stated that he was at Circle Office on the day when the incident occurred and that on the date of giving his report he had questioned the petitioner and the petitioner had maintained his earlier version of innocence. The Branch Manager had felt that the explanation given by the petitioner is not satisfactory. During his examination as MW2, this witness has stated that the entire information gathered by him regarding the incident had been incorporated in the report. He asserted that he has questioned the petitioner from his chamber regarding the incident before sending his report.

29. It is to be borne in mind that the report given by the Branch Manager is the first written version of the incident. The incident had happened on 25.10.2007 and the alleged questioning of the petitioner had taken place on the same day at 06.30 PM. The Branch Manager had sent his report on 26.10.2007. The Inspector who is involved in the incident had given a report regarding the incident only on the next day, on 27.10.2007. Thus, the report given by the Branch Manager has its own importance as the untarnished version regarding the incident, though on the basis of information gathered. The evidence given by MW1, the Inspector regarding the information conveyed to the Branch Manager is relevant in this respect. He has stated that information regarding the incident including the admission of mistake by the petitioner was given to the Branch Manager on the next day itself by him in person. Mathiazhagan also has stated during his cross-examination that he was appraised that Manager with the entire happenings starting from finding the bundle out from the gap to the acceptance of mistake by the petitioner. The Branch Manager called him around 07.00 PM from the Circle Office, Coimbatore. He has added that on the next day he had appraised that Branch Manager about the incident in person. He was again asked if he was sure if the petitioner had admitted and he had properly appraised the Manager about the happening over phone on 25.10.2007 and personally on 26.10.2007 and he had answered in the affirmative. However, in spite of the Inspector and Mathiazhagan confirming that they have informed the Branch Manager about the acceptance of guilt by the petitioner, this does not find a place in the report given by the Branch Manager on the next day. On the other hand, this report is to the effect that the Officers who were involved in the incident are reported to have questioned the petitioner but he has not accepted his responsibility for the incident. He himself has questioned the petitioner and he has maintained that he is innocent. If actually, an admission of guilt was made by the petitioner on the same day, in the presence of Inspector Mathiazhagan and Mohammad Iqbal and others and information regarding the same was given to the Branch Manager definitely this would have found a place in the report given by the Branch Manager on the next day. The Branch Manager has asserted during his examination that what all information gathered by him are narrated in the report. This creates suspicion regarding the case of admission of guilt by the petitioner put forth for the first time through the report given by the Inspector on the next day.

30. Even assuming that an admission was made by the petitioner, what exactly is the admission that was actually made? While referring to the evidence of Mahendran I have extracted the actual words said to have



been stated by the petitioner by way of admission. What he has allegedly stated is that it is the first time and it has happened beyond his control and it will not occur again. What exactly has happened? This never seems to have been considered by the Enquiry Officer. The Inspector himself has stated that the petitioner was standing on the ladder when power failed. The version of the petitioner is that while closing the bin after power failure the bundle might have come out of the bin and fallen down. It will be pitch dark inside the vault, once power supply is gone. It is a room without any windows or any other openings and does not admit light in the absence of electricity. The poor man, a Class-IV employee who was put in the midst of several higher officials probably was probably terrified by the recovery of a bundle of notes from the floor and might have taken it upon him that it is because of his own fault the bundle has fallen down. If the wording of admission allegedly made by the petitioner as given by the Inspector is taken into account this is the only interpretation that would be given to the same. According to the Inspector and Mathiazhagan, the petitioner has stated that he would commit suicide in case action is taken against him. He certainly might have realized the possibility of some action against him from the conduct of the higher officials surrounding him and this must have been the reason for such a statement by him. It could be seen from the initial report given by MW3 in the enquiry proceedings on 30.10.2007 also that the petitioner's version was that the bundle could have fallen down while he was closing the bin. What he has stated in his report is that Mahendran, Mohammad Iqbal and Mathiazhagan enquired in detail how the bundle could have gone into the gap and then the petitioner had admitted the act. When such different versions regarding the alleged admission made by the petitioner are there, the petitioner is certainly entitled to the benefit of doubt. One is also to bear in mind the fact that it would have been humanly impossible for the petitioner to carry out the bundle outside and use it for his own purposes since he was among several Officers and also because the vault was being zealously guarded by Police Officials.

31. Certainly in a departmental enquiry preponderance of probability is what matters and the kind the evidence that is required in a criminal proceedings is not required. But when the nature of the incident in question is taken into account it could be seen that the finding against the petitioner tells at his very conduct and character, apart from it being a threat to his survival also because of the probability of his losing his only means of livelihood. This being the case, certainly the evidence is to be appreciated in a very rigorous manner. When a scanning of the evidence and filtering of the evidence is made as above it could be seen that it is not established beyond doubt that the petitioner has

committed the misdeed alleged against him. The degree of evidence required in the case is more than preponderance of probability and almost of a degree as in a criminal case. When such consideration is made I can say without doubt that the Enquiry Officer was not justified in entering a finding against the petitioner. There was no justification in the Disciplinary Authority further worsening the position of the petitioner by going one step forward in stating that the finding of the Enquiry Officer that Charge No. 2 is not fully established is not correct and entering a finding against the petitioner in this respect also. There was no justification in sending out the petitioner from service by giving the punishment of Compulsory Voluntary Retirement also. The petitioner is entitled to an order in his favour.

32. Accordingly, the Respondent is directed to reinstate the petitioner in service within a month with continuity of service with back wages limited to 50% and other attendant benefits.

33. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 19th November, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri M. Kalaiarasan  
For the 2nd Party/Management : None

#### Documents Market:

##### On the petitioner's side

Ex. No.	Date	Description
Ex. W1	17.11.2007	Explanation letter issued by Asstt. General Manager/Disciplinary Authority
Ex. W2	08.12.2007	Reply submitted by the petitioner for the explanation letter
Ex. W3	03.03.2008	Show Cause letter CO: CBE:625:2007-08 issued by Assistant General Manager/Disciplinary Authority
Ex. W4	31.03.2008	Reply to the Show Cause Notice by the petitioner
Ex. W5	05.04.2008	Charge Sheet CO:CBE:VG:07:2008-09 issued by Assistant General Manager/Disciplinary Authority
Ex. W6	09.05.2008 03.06.2008	Enquiry proceedings conducted against the petitioner
	18.06.2008 26.06.2008	alongwith both management and defence exhibits
Ex. W7	12.07.2008	Presenting Officer brief

Ex. W8	-	Defence Summing up
Ex. W9	15.09.2008	Enquiry Officer's findings
Ex. W10	24.09.2008	Employee's comments on Enquiry Officer's findings
Ex. W11	03.11.2008	Proposed punishment communicated vide CO:CBE:VG:367:2008-09
Ex. W12	05.12.2008	Punishment order CO:CBE:VG:429:2008-09
Ex. 13	05.01.2009	Appeal against the punishment imposed by the Disciplinary Authority
Ex. W14	02.03.2009	Disposal of appeal preferred by the petitioner
Ex. W15	14.07.2009	Petition under Section-2A of ID Act
Ex. W16	28-09.2010	Counter by the management to the petition under Section-2A
Ex. W17	20.10.2010	Rejoinder of the employee to the counter
Ex. W18	08.03.2011	Reply by the management to the rejoinder.

**On the Management's side**

Ex.No.	Date	Description
Ex. M1	04.07.2008	Covering letter of Presenting Officer enclosing his summing up (PRESENTING OFFICER'S SUMMING UP FILED BY PETITIONER)
Ex. M2	22.07.2008	Covering letter of Defence Representative enclosing his summing up (DEFENCE SUMMING UP FILED BY PETITIONER)
Ex. M3	02.12.2008	Proceedings of personal hearing held on 22.12.2009

नई दिल्ली, 3 जनवरी, 2014

**का०आ० 283.**—औद्योगिक अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई के पंचाट (41/2011) प्रकाशित करती है जो केन्द्रीय सरकार को 01.01.2014 को प्राप्त हुआ था।

[सं० एल-12012/64/2010-आईआर(बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 3rd January, 2014

**S.O. 283.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court,

Chennai as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 01.01.2014.

[No. L-12012/64/2010-IR(B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**

Friday, the 6th December, 2013

**PRESENT : K.P. PRASANNA KUMARI,**  
Presiding Officer

**Industrial Dispute No. 41/2011**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Union Bank of India and their workman)

**BETWEEN**

Ms. M.A. Vijayalakshmi : 1st Party/Petitioner

**AND**

1. The Branch Manager : 2nd Party/1st Respondent  
Union Bank of India  
Vilachery Branch  
Madurai-6
2. The Deputy General : 2nd Party/2nd Respondent  
Manager  
Union Bank of India,  
Regional Office  
72, P.T. Rajan Road  
Bibikulam  
Madurai-2

**Appearance:**

For the 1st Party/ : M/s. Balan Haridas,  
Petitioner Advocates

For the 2nd Party/1st & : M/s. T.S. Gopalan &  
2nd Respondent Co., Advocates

**AWARD**

The Central Government, Ministry of Labour & Employment, vide its Order No. L-12012/64/2010-IR(B-II) dated 09.05.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

*"Whether the action of the management of Union Bank of India, Madurai in terminating the services w.e.f. 17.08.2009 of Ms. M.A. Vijayalakshmi is justified or not? What relief the workmen is entitled to?"*

On receipt of the Industrial Dispute this Tribunal has numbered it as ID 41/2011 and issued notice to both sides. Both sides have entered appearances through their counsel and have filed Claim and Counter Statement as the case may be.

3. The averments of the petitioner in the Claim Statement are these:

The petitioner had joined the services of the Respondent Bank in July 2008. She had been assisting the staff of the Respondent Bank and the customers of the bank. She was paid @ Rs. 80/- a day on weekly basis. She had worked for more than 240 days in a period of 12 calendar months. Though the petitioner was termed to be a temporary employee she was discharging the work of a permanent employee. She was assured that in due course her services will be made permanent. However, on 17.08.2009 the Respondent denied work to the petitioner. No reason was assigned for terminating the services of the petitioner in this manner. She was not given any notice of termination also. The termination would amount to retrenchment, the petitioner having worked for more than 240 days within a period of 12 calendar months. However, the Respondent has not complied with Section-25F of the Industrial Disputes Act before terminating the services of the petitioner. The petitioner had served the Respondent honestly and efficiently. The illegal termination has caused hardship and loss to the petitioner. The petitioner is without any employment. The Respondent has engaged a new person after terminating the services of the petitioner. The termination is in violation of Section-25H of the ID Act also. The Respondent shall be directed to reinstate the petitioner in service with full back wages and other attendant benefits.

4. The Respondents have filed Counter Statement contending as follows:

The Union Bank has clearly laid down procedure for recruitment. However, depending on contingencies, the Branch Managers used to engage casual workers on temporary basis. The Manager of Vilachery Branch of the Bank has engaged the petitioner from 6th July, 2008 without any permission from the Regional Office. The petitioner was paid @ Rs. 80/- per day until her last engagement in August 2009. The marriage of the petitioner having been fixed for September, 2009 she did not attend the job after 1st week of August 2009. On 01.09.2009, one Pandi having SB A/c in the branch came to the bank for updating the entries in his Pass Book. He informed the Bank that he had not made withdrawal of Rs. 5,000/- on 21.07.2009 as shown in the Pass Book. On verifying the accounts, it was noticed that while

crediting SB A/c of the account holder Pandi with the proceeds of the closed deposit, instead of crediting Rs. 72,153/- the petitioner credited only Rs. 67,153/- and credited the balance amount of Rs. 5,000/- to the SB A/c of her sister, it was revealed that petitioner had come to know of the Pass words of the Branch Manager and other officials of the Bank. The petitioner had gained access to computerized personal ledger account of certain customers and made debit entries of the accounts and made corresponding credit entries to the accounts of herself, her relatives and her friends. Thus the petitioner had embezzled various amounts by falsification of accounts. She had encashed pay orders of more than Rs. 4,60,000/- payable to various beneficiaries. She had transferred Rs. 66,390/- from the accounts of various SB A/c holders to the SB A/c of herself, her family members and friends. Thus the petitioner had misappropriated Rs. 6,25,762.89. The Branch Manager reported her fraudulent transactions to the Regional Office. The petitioner herself was called and questioned by him. On 05.09.2009, the petitioner came to the Bank alongwith her father, one Mohammad Moideen and Sikander Basha. She informed that her father had executed an agreement of sale in favour of Mohammad Moideen in respect of his house. Mohammad Moideen remitted Rs. 5.00 lakhs in cash to the credit of petitioner's father SB A/c. This amount was transferred to the Sundry Debtors A/c as requested by petitioner and her father. The Petitioner represented that she had given some money to the Jewel Appraiser of the Bank and that he had agreed to remit Rs. 1,25,752/- and this also could be adjusted towards the money misappropriated by her. Subsequently, it was revealed that the Sale Agreement in favour of Mohammad Moideen was executed without disclosing the agreement that was executed in favour of another one in respect of the same property. Later the petitioner's father sent notice to the officials of the Bank Mohammad Moideen, etc. alleging that they had conspired and forced him to part with Rs. 5.00 lakhs and had obtained the signatures in the agreement of sale. The First Respondent had filed a Police complaint against the petitioner. The officials of the Bank who had revealed the ID numbers to the petitioner were proceeded against and punished. The employment of the petitioner in the Bank was as a casual labourer the bank did not stop her engagement. She stopped attending work due to her marriage. The petitioner is not entitled to any relief.

5. The petitioner has filed a rejoinder denying the allegations of misappropriation raised against her in the Counter Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Exs. W1 and Ex. W2 and Ex. M1 to Ex. M15.

**7. The points for consideration in the case are:**

- (i) Whether the action of the management in terminating the services of the petitioner is justified?
- (ii) What is the relief to which the petitioner is entitled?

**The Points**

8. The petitioner who is a BBA Degree Holder had joined the services of the Respondent Bank on 07.07.2008. In her Claim Statement itself she has stated that she was termed to be a temporary employee though she was discharging the work of a permanent employee. The petitioner had continued with the employment of the Respondent till 17.08.2009. The case of the petitioner is that after this the Branch Manger had orally denied work to her. What is stated in the Counter Statement is that the marriage of the petitioner having been fixed she has, on her own, stopped working in the Bank.

9. During her cross-examination the petitioner has put forth a case that she was engaged by the Bank to do sweeping, cleaning the toilet, bringing the water, etc. However, in her Claim Statement she does not have a definite case regarding the nature of work that was assigned to her at the Bank. In any case she has no case in the Claim Statement that she was doing sweeping, cleaning, etc. But what she has stated is that she was assigned with the work of assisting the staff of the bank and also the customers of the branch. So it is very much clear that her engagement was of the nature of a higher status than what she has claimed during her cross-examination.

10. Until the petitioner has left the services of the Bank on 17.08.2009, there seems to have been no complaint of any sort against her. The case of the Bank is that the malpractices resorted to by the petitioner were detected subsequently. It is alleged in the Counter Statement that this was noticed after a customer Pandi having SB account in the Bank came and claimed that he had not debited Rs. 5,000/- in his account on 21.07.2009. On verification it was revealed that while crediting the proceeds of a closed deposit to the SB Account of Pandi, Rs. 5,000/- out of this was debited and credited to the account of the sister of the petitioner. On further verification other falsification of accounts are also said to have been revealed. She is said to have transferred money to her account and also the accounts of her mother, brother, sister and others closely acquainted with her.

11. While terminating the services of the petitioner the Respondent Bank had not conducted any enquiry. In fact, according to the Bank she had stopped working at the

Bank on her own and it was not a case of termination by the Bank. However, on account of the claim of the petitioner that she is entitled to be reinstated in service, she having been terminated illegally, the Bank has wanted to prove the allegations made against the petitioner. The Manager of the Vilachery Branch where the petitioner was working had been examined as MW1. He has stated that the petitioner was engaged as a casual clerk. He had reiterated the case of the Respondent regarding the fraudulent transactions allegedly committed by the petitioner. The statement of account of Pandi, the account holder of the Bank, his Pass Book and also the statements of account of the petitioner herself, her sister, brother and mother are also produced and marked through this witness. The copy of the sale agreement said to have been executed between the father of the petitioner and Mohammad Moideen is also produced. Then there is also a statemet of account of Murugesan, the Appraiser of the Bank to whom the petitioner had allegedly entrusted the task of making some ornaments for her. The case is that the petitioner had dubiously credited some amount to the account of this Appraiser by fraudulently debiting amount from other accounts also. The letter said to have been given by the petitioner and her father permitting Moideen to remit Rs. 5,00 lakhs towards the misappropriated amount also is produced.

12. Ex.M9 is the copy of the Audit Report prepared by the Zonal Manager on detection of the alleged fraud. In his report he has referred to the account of the petitioner, her mother, brother, sister and also the Gold Appraiser apart from two others. The report is to the effect that the petitioner has changed the names of some of the SB Account holders by making alterations in Customer IDs and managed to embezzle amounts. He has given the total amount defrauded as Rs. 6.25,762.89.

13. Referring to the Account Holder, Pandi, the counsel for the Respondent has pointed out that Rs. 5,000/- out of his account has been siphoned to the account of Anitasri, the sister of the petitioner. Ex.M1 is the statement of account of Pandi. Ex M2 is the extract of his Pass Book. Ex.M3 is the statement of account of Anitasree. On going Through these documents, it could be seen on 21.07.2009, Rs. 72,153/- has been credited to the account of the petitioner and on the same day Rs. 5,000/- has been credited to the account of Anitasree by transfer. Ex.M2, the extract of the Pass Book also shows this. Ex M6 is the statement of account of the petitioner. This would show that a number of transactions were carried out in this account for the period from 04.08.2008 to 17.08.2009. Amounts are seen transferred to the account of her mother, brother, sister etc.

14. The evidence given by MW1 is that on detection of the fraud, the petitioner was called to the Bank, that herself and her father came to the bank alongwith one Moideen and another and Moideen remitted Rs. 5.00 lakhs to the account of her father which was transferred to the



Sundry account of the Bank to make good the loss, as permitted by the petitioner and her father. Subsequently the father seems to have issued notice to the Bank and also to Moideen alleging that he was made to put signature in a Sale Agreement by force and so also himself and his daughter were made to put signature in a letter amounting to confession of the misconduct alleged. The petitioner who was examined as WW1 has denied the allegations in her Proof Affidavit. During her cross-examination she has stated that Ex.M15(a) contains the signature of herself and her father. She has also stated that on 13.09.2009 Mohd. Moideen and another had gone to the house and represented that her father had executed an agreement of sale in favour of Mohammad Moideen from whom he had taken an advance of Rs. 5.00 lakhs. She admitted that title deed of the father and the agreement are with Mohammad Moideen Ex.M10 the copy of the Sale Agreement was put to her and she admitted that it contains the signatures of her father.

15. A translation of Ex.M15(a) which is in Tamil has been furnished to me. This is in the form of a letter written by the petitioner and her father to the then Branch Manager of Vilachery Branch. It will be appropriate to refer to the fact that MW1 was the Manager of the Branch at this time. The letter is to the effect that while working on a temporary basis in the bank the petitioner has committed mistakes and had misappropriated amount of above Rs. 6.00 lakhs. It further states that the father of the petitioner had sold his house and remitted Rs. 5.00 lakhs to the Bank on 05.09.2009. It is also stated that the appraiser of the Bank has agreed to remit Rs. 1.08,700/-.

16. The counsel for the petitioner has vehemently argued that the case of misappropriation advanced by the Respondent is not at all established. He has pointed out that the Respondent has not specified what actually is the charge against the petitioner. In answer to this contention it is to be stated that since the petitioner has claimed reinstatement in the service of the Bank the attempt of the Bank has been to establish that the petitioner is not a person who could be relied upon, that she had engaged in such dubious transactions even while she was engaged as a casual employee and she is not entitled to be reinstated in service because of the shady transaction alleged committed by her.

17. With reference to Ex.M15(a), the counsel for the petitioner has argued that it is a document which is not proved in accordance with law. He has referred to the dictum laid down by the Apex Court that mere filing or exhibiting a document in Court does not amount to proof of its contents, that it may amount to admission of its contents and not the truth (2010 4 SCC 491). No doubt the petitioner has denied to have anything to do with the contents of Ex.M15(a). What she has stated by way of re-examination while giving evidence as WW1 is that herself

and her father were made to put their signature in a blank paper. She has further stated that a complaint was given to the Police regarding this. The attempt for the counsel for the petitioner, referring to Ex.M15(a) was that a very examination of the document would show that the contents of the document were written on a subsequent time. According to him, the signature of the father of the petitioner in Ex.M15(a) is too close to the last line in the document and this would show that the signatures were put first and the contents were incorporated subsequently. The same is the contention seen raised by Ex.M13, the notice that was sent by the father of the petitioner to the Branch Manager, Mohammad Moideen, etc. in this respect, it will not be inappropriate to state that MW1 had joined the Bank as Manager only in May 2009. The petitioner had worked in the Branch only for a very short period after that. In the normal course, there is no reason for this witness to give false evidence against the petitioner, to have drastic consequences. The counsel for the petitioner has referred to 2009 12 SCC 78 to advance his argument that charges for bribery should be specific and that proof and suspicion are distinct. Regarding charge, I have already stated that the attempt is to show that the petitioner is not entitled to be considered for reinstatement in the light of the allegations against her. The Counter Statement does refer to the charge against her and states that she had embezzled various amounts by falsification of account and fabrication of accounting entries. The counsel for the petitioner has referred to the decision 2009 2 SCC 570 and argued that confession itself is not sufficient and some evidence ought to have been brought on record regarding the misconduct.

18. Even assuming that the allegation raised by the Respondent against the petitioner is not established. I do not think, in the circumstances brought out in evidence, the Respondents could be said to be unjustified in taking the stand that she is not entitled to be reinstated in service. There is sufficient evidence to show that after the petitioner has started to work in the Bank accounts were opened in the name of all her close relatives. Several transactions of suspicious nature have taken place with reference to these accounts. Of course, it has been argued by the counsel for the petitioner that the petitioner has nothing to do with the entries in the statement of accounts, she having been a casual employee. It was brought out during the cross-examination of MW1 that the Password assigned to a particular employee is not intended to be revealed. It was also brought out that the petitioner had no training in banking transactions. What MW1 has stated is that she was guided to take pass book printout and to do some fundamental transactions. According to him, she was allowed to operate the systems after they were opened. It is a fact that on the basis of the Sale Agreement though disputed by the father of the petitioner, Rs. 5.00 lakhs has been deposited by Moideen in his account and this was

transferred to Sundry Account to make good the loss. There is also the admission by the petitioner that the Title Deed of her father is with Moideen. All these put the petitioner under strong suspicion regarding the allegations made by the Bank against her. An employee who is carrying out banking transactions is expected to be above suspicion, of the utmost integrity and sincerity. The petitioner, even as admittedly was only a casual employee, working for wages @ Rs. 80 a day. Certainly in the wake of the allegations the Bank has all justification in resisting her claim for reinstatement. I am not inclined to accept the plea for reinstatement by the petitioner.

19. The malpractices allegedly done by the petitioner were revealed only after she has stopped working in the Bank. It is clear from the admission of the Respondent itself that she has worked in the Bank from July, 2008 to the middle of August 2009. So definitely she must have completed more than 240 days. Though the present case of the Respondent is that the petitioner has stopped coming to the Bank because of her marriage, Ex.M5, the letter by the Branch Manager to the Head Office states that she was stopped from work during 1st week of August, 2009. There is no case for the Respondent that any compensation was paid to her under Section-25F of the Act. The petitioner would have been entitled to an amount equal to her 15 days average pay for 1 completed year of service. The Respondent is liable to pay this amount by way of compensation.

20. The Respondent is directed to pay amount equal to 15 days average pay for the completed year of service to the petitioner towards compensation.

21. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 6th December, 2013)

K. P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined:

For the 1st Party/ : WW1, Ms. M.A. Vijayalakshmi  
Petitioner

For the 2nd Party/ : MW1, Sri S. Muniratnam  
Management

#### Documents Marked on the side of the Petitioner :

Ex. No.	Date	Description
Ex. W1	06.07.2010	FIR
Ex.W2	22.12.2011	Final Report

#### Documents marked on the side of the Management :

Ex. No.	Date	Description
Ex. M1	01.06.2008 17.08.2009	Statement of Account of V. Pandi SB A/c. No. 783

Ex. M2	-	Pass Book - Extract of V. Pandi - SB A/c No. 783
Ex. M3	24.07.2011 06.08.2011	Statement of Account of Ms. M.A. Anithasree
Ex. M4	17.08.2009	Withdrawal slip by Ms. M.A. Anithasree for Rs. 5,000 and Credit Slip to the account of V. Pandi SB A/c No. 783 - (issued by Vijayalakshmi - Petitioner)
Ex. M5	01.09.2009	Email - Report from Branch Manager - Vilachery to Regional Head - Madurai - regarding mala fide transactions by the petitioner
Ex. M6	04.08.2008 05.02.2013	Statement of account of M.A. Vijayalakshmi - SB A/c No. 5975 (Petitioner)

नई दिल्ली, 3 जनवरी, 2014

कांआ 284.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीपीएल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 100/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/01/2014 को प्राप्त हुआ था।

[सं एल-30012/82/1997-आईआर(सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 3rd January, 2014

S.O. 284.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 100/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Bharat Petroleum Ltd. and their workmen, received by the Central Government on 03/01/2014.

[No. L-30012/82/1997-IR(C-I)]

M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT cum-Labour-Court,  
Ahmedabad Dated 31st July, 2013

Reference (C.G.I.T.A.) No. 100 of 2004

Reference ITC 73 of 1998 (old)

The Dy. General Manager (P)  
Bharat Petroleum Ltd.  
Western Region, 1st Floor,  
Golden Triangle — Stadium Road,  
Ahmedabad-14 ...First Party (Management)

AND

Their Workman Shri Vinayak Himmatlal Rawal,  
A/1, Lalbhai Apartment,  
Near Kiran Par, Nawa Wadaj,  
Ahmedabad-380013  
At Present c/o Himmatlal C. Rawal  
88, Giritwar Bunglows,  
Ramwadi, Isanpur,  
Ahmedabad-382443

Gujarat ...Second Party (Workman)

For the First Party : Shri M.J. Seth, Advocate,  
Smt. Meenaben Shah, Advocate

For the Second Party : Shri Azad Parihar, Advocate

### AWARD

Considering an Industrial Dispute exist between the employers in relation to the management of M/s. Bharat Petroleum and their workman, the Government of India, Ministry of Labour, New Delhi by its Order No. L-30012/82/97-IR-C-1, dated 27.08.1998, in exercise of power conferred by cl. (d) of sub-section (1) and Sub-section 2A of section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to the Central Government Industrial Tribunal, Ahmedabad as per terms of reference as per the Schedule:—

### SCHEDULE

"Whether the action of the management of Bharat Petroleum Corporation Ltd., Ahmedabad in dismissing Shri V.H. Rawal, Engg. Asst., w.e.f. 18.11.1996 is legal and justified? If not to what relief the concerned workman is entitled to."

2. The parties appeared and submitted pleadings — statement of claim at Ext-5 by the 2nd party workman and the written statement at Ex-7 by the 1st party (Bharat Petroleum Corporation Ltd.).

3. The case of the 2nd party workman as per statement of claim, shortly stated, is that he joined as Engg. Assistant on 18.12.1978 in the service of the corporation and was performing his duty faithfully and diligently but in spite of that officers of the corporation were harassing him and that he was never issued any notice or warning in the past. But a show cause notice dated 25.04.1995 was wrongly issued to him containing

false allegation and was served upon him and he replied to show cause notice but even then wrong charge sheet was issued to victimise him, he was not provided with documents as demanded. He was not given fair chance to defend at the enquiry by not allowing Advocate as defence counsel in the enquiry. The corporation had taken one sided attitude with a view to award punishment. Sufficient opportunity was not granted and illegal enquiry was conducted, enquiry officer was in collusion with management and there was preplanned conspiracy against him. The finding of enquiry officer is baseless and perverted. Even after dismissal he (2nd party) has not been given his dues. On these scores prayer is made to set aside the order of dismissal date 18.11.1996 and to reinstate him with full back wages and with litigation cost of Rs. 5000 and any other relief to which he is found entitled.

4. As against this case of corporation (1st party) is that the 2nd party Shri V.H. Rawal, joined the service of the corporation as an Engineering Assistant on 18.12.1978 at its Kandla installation and he subsequently sought for transfer to Ahmedabad Divisional Office and then at the relevant time he was working as an Engg. Asst. at Ahmedabad Divisional Office. The 2nd Party was issued a charge sheet dated 08.06.1995 for the charges — "Engaging in unauthorised private trade, or doing private or personal work within the premises of the establishment during working hours with or without tools or materials belonging to the establishment without the prior permission of the competent Authority. A fair enquiry was conducted and principles of natural Justice was followed and on the basis of evidences led and documents produced charge was proved as per enquiry report. The misconduct committed by the workman V.H. Rawal was of serious nature. Before taking disciplinary action 2nd show cause notice dated 22.04.1996 was given to the delinquent workman alongwith copy of enquiry report and the 2nd party workman submitted his representation to 2nd show cause on 05.07.1996. The proved allegation to the charge levelled was to disregards to the corporation's rule and discipline and that goes to the root of the integrity of the delinquent and so dismissal order dated 05.11.1996 was issued. The corporation (1st party) has denied the allegation made as para 1 to 9 of the statement of claim. Alternative plea has also been taken at para 15 by the corporation that if the Tribunal comes to the conclusion that the enquiry held against the 2nd party workman was not in according to laid down principles of natural Justice, then the charges levelled against the workman will be proved by the 1st party by leading proper evidence before this Tribunal. The contention of the 1st party is that the 2nd party workman is not entitled to get any relief in this case and the reference is fit to be rejected.

5. The 1st party submitted the relevant documents of domestic enquiry held against the delinquent workman through a list Ext-8. The document have been marked Ext.-12 to 23. The 2nd party submitted a pursis at Ex. 10 dated 20.08.2001 as to not challenging domestic enquiry held against him. The 2nd party workman Shri V.H. Rawal deposed at Ex. 29 only on his unemployment since after dismissal and also on the point that order of punishment of the Disciplinary Authority is hard and excessive and that his father being pension holder is supporting him and that his date of superannuation is 31.10.2010 which has expired. He deposed on 12.10.2011. The 1st party did not lead oral evidence and so closed its evidence and have relied upon the enquiry documents on Ext. 12 to 23.

6. In view of the pleadings of the parties and the evidences adduced the following issue are taken upon for determination in this case:—

#### ISSUES

- (i) Is the reference maintainable?
- (ii) Has 2nd party workman V.H. Rawal valid cause of action to raise the dispute?
- (iii) Whether the domestic enquiry held against the 2nd party workman is valid as per laid down principles of natural Justice?
- (iv) Whether the findings to report of the enquiry office dated 10.04.1996 (Ext. 20) is valid and proper? Whether the 2nd party has legal right to challenge the perversity of enquiry report even after submitting pursis Ext. 10 as to admitting the domestic enquiry held against him and not challenging its propriety?
- (v) Whether the order of punishment of dismissal from the services awarded by the Disciplinary Authority against the 2nd party is shockingly disproportionate to the gravity of charges levelled against the 2nd party workman?
- (vi) Whether the 2nd party workman is entitled to get relief if any?
- (vii) Whether the action of the management of the 1st party (corporation) in dismissing Shri V.H. Rawal (workman) w.e.f. 18/11/1995 is legal and justified?
- (viii) What orders are to be passed?

#### FINDINGS

7. **Issue No. (iii) and (iv) :-** Ext. 12 is copy of the show cause notice dated 25.11.1995. Ext. 13 is reply of 2nd party workman to show cause notice dated 08.05.1995. Ext. 14 is copy of the charge sheet dated 08.06.1995. Ext-15 is Hindi version of the charge sheet dated 08.06.1995. Ext. 16 is explanation of workman V.H. Rawal

to the charge sheet dated 27.06.1995. Ext. 17 is order appointing Inquiry officer dated 08.06.1995. Ext. 18 is order appointing presenting officer dated 08.06.1995. Ext. 19 is enquiry proceedings dated 29.06.1995 and onwards. Ext. 20 is report of the Inquiry officer dated 10.04.1996. Ext. 21 is 2nd show cause notice dated 22.04.1996 given to the delinquent workman V.H. Rawal. Ext. 22 is written explanation in pursuance to the 2nd show cause notice dated 05.07.1996. Ext. 23 is order of dismissal dated 05.11.1995 of the Disciplinary Authority alongwith covering letter dated 18.11.1996.

8. By filling Ext. 10 the 2nd party workman V.H. Rawal has not challenged the propriety of domestic enquiry held against him. Charge sheet dated 08.06.1995 levelled against V.H. Rawal (delinquent) is at Annexure (IV). From perusal of Ext-16, it appears that the written explanation dated 27.06.1995 (Annexure II) asking for engaging Advocate as defence representative was not at all acceptable in domestic enquiry as per rules and condition of certified standing order and memorandum of settlement. Ext. 19 is the entire inquiry file commenced on 29.06.1995 where in the letter dated 27.06.1995 was taken and the workman attended and signed the inquiry proceedings. By letter dated 13.07.1995, the inquiry officer gave a detailed reply regarding objection raised by the workman in his letter dated 27.06.1995 and 05.07.1995. As regards documents, in para 2, it has been stated that all documents will be placed before you for inspection during the course of inquiry and that necessary time will also be given to you for preparation of defence. It was also clarified that the action initiated is in pursuance of certified standing orders. Its copy has been submitted by the 1st party. Cl. 29.4 provides permitting the assistance of a co-employee but not permitting to engage advocate was rightly not granted. In the inquiry held on 02.08.1995, the workman was present and signed the proceedings. In the inquiry held on 05.09.1995, the workman was present and signed the proceedings. The inquiry officer stated that relevant documents will be submitted and at page 8, inquiry proceedings dated 10.09.1995 (P. 10) workman was present and produced letter 19.09.1995 marked Annexure XII mention about documents, statement of M.W. 1 Neren N. Shah is at page 10 of inquiry file who has distributorship of L.P.G. Bharat Petroleum Cop., Kurnagar, Ahmedabad. The workman who was present did not cross examine this M.W. 1 though remained present did not sign the proceedings inquiry proceedings dated 27.09.1995 (page 14) go to show that copy of these proceedings alongwith letter to workman dated 27.09.1995 (Annexure XIII) by hand delivery. In the inquiry proceedings dated 28.09.1995 (page 15) workman was present. He stated that I have received copy of proceedings and letter stated that if documents are not given in advance, I will not participate



in the proceedings. In the inquiry proceedings dated 28.09.1995 (page 15) workman remain present but did not cross-examine the management witness and the presenting officer proceed further in inquiry proceedings. From perusal of the enquiry proceedings it clearly reveals that documents were produced by the presenting officers during the statements of management witnesses T. Suryavanshi (M.W. 2) letter No. P2 Design/cp. dated 12.09.1995 (Annexure XV) copy of letter issued by Dy. Chief Controller of Explosives Bombay to Bhadra Seva Sahari Mandli Ltd. dt. 27.03.1995 (Annexure XVI. M.W. 3 on 09.10.1995 (page 23) who was Sr. Manager, Ahmedabad Division. Statement of M.W. 4 N.R. Joshi, Manager Bhadran Seva Sahkari Mandli Ltd. was taken on 12.10.1995 (page 25) Annexure XIX Statement of R.C. Patel (M.W. 5) clerk Bhadran Seva Sahkari Mandli Ltd. was taken on 12.10.1995 (page 28) Annexure XX and statement of T.S. Ramkrishnan (M.W. 6) Dy. Manager Eng. Ahmedabad Division was also taken on 12.10.1995 (P. 31) *vide* Annexure-XVIII, Annexure-XIV, Annexure-XV.

9. Now coming to examine the evidence of the management witness in the inquiry proceedings. M.W. 2 is T. Suryavanshi, He proved letter dated 12.09.1995 where name of workman V.H. Rawal appears at Sl. No. 4. As per Annexure XVI licence granted in favour of Bhadran Sevan Sahkari Mandli dated 22.03.1995 and signature of workman was identified. In the evidence of MW. 4 N.R. Joshi letter written by Mr. Joshi, visiting card of workman (V.H. Rawal) and photo copy of licence were proved. In the evidence of Shri Ram Krishna (M.W. 6) leave application of workman (V.H. Rawal) was proved and visiting card of workman Rawal was produced. The workman V.H. Rawal duly acknowledged the letters written by the inquiry officer dated 04.10.1995, 09.10.1995 (proceedings with Annexure) letter dated 12.10.1995 (inquiry proceedings with Annexures, letter dated 13.10.1995, letter dated 18.10.1995, letter dated 14.10.1995 (P.O.) intimated closed evidence requested to attend on 14.10.1995, letters dated 17.11.1995, letter dated 04.12.1995 and letter dated 16.01.1996.

10. It has been argued by the learned counsels for the 1st party corporation that in absence of any challenge to the correctness, legality or validity of the inquiry conducted, the Tribunal cannot go into findings recorded by the enquiry officer regarding the misconduct committed by the delinquent workman (2nd party) and also pointing towards Ext. 10 of the workman regarding not challenging the domestic enquiry held against him. Such arguments of the 1st party clearly finds support from the case law of UP State Road Transport Corporation vs. Vinod Kumar (2008, CLR 847 S.C.) and also from the case of Muljibhai Patel Urological Hospital vrs. Arunaben I. Joshi (2009, CLR. 403), Gujarat High Court). On the other hand Shri Azad Singh Parihar, the learned counsel appearing for the 2nd party could not file any befitting case law to support the stand that even after filing pursis (Ext. 10)

regarding not challenging the validity, correctness of domestic enquiry, the workman can taken plea and challenge the perversity of findings of the enquiry officer as per report Ext. 20. So it is manifestly clear that the workman as per Ext. 10 accepted the validity, correctness of domestic inquiry held against him and so he cannot blo hot and cold simultaneously in choosing purversity of findings of Enquiry Officer as per Ext. 20 in view of two case laws relied upon by the 1st party-2008, CLR 84 and 2009, CLR 403 (Supra).

11. In view of discussion made above issue No. (iii) and (iv) are decided in favour of the 1st party (corporation) holding that domestic enquiry held against the delinquent. V.H. Rawal 2nd Party is valid as per laid down principles of natural Justice and that the report of Enquiry Officer and its findings are treated to be valid and proper in view of Ext. 10 and that the 2nd party has no any right to challenge its purversity.

12. **Issue No. (v):-** On behalf of the 2nd party one document (Annexure C) Annexure to the directors Report -2010-11 and some case laws have been filed *vide* list Ext-33. Ext-33/1 is two page Annual report for the year 2010-11, containing the names of 103 employees of Bharat Petroleum. On the basis of this Ext. 33/1, the learned counsel for the workman argued that had the workman not been dismissed he would have served the corporation for 32 years date of joining 18.12.1978 and date of superannuation 31.10.2010 and might have been promoted to the post of Manager/Sr. Manager and giving example of employee at Sl. No. 97, 92 and from Sl. No. 14, 58 who joined together with equal qualification are enjoying promotions. On the other hand Ms. Meenaben Shah, Advocate for the 1st party (corporation) submitted written aruguments with respect to Ex. 33/1 of the 2nd party. Ext. 36 is the written arguments of the 1st party to the effect that the present reference pertains to termination of the services of the 2nd party and so the detail regarding promotion granted by the 1st party in Annexure to the Director's report is legally not maintainable and is extraneous. It has been submitted further in the written argument (Ext. 36) that *w.e.f.* 1995 as per memorandum of settlement on promotion policy between the corporation and its workman promotion is granted from time to time based on eligibility criteria and other relevant selection parameters, Cadre is based on eligibility criteria mentioned therein. The promotion to the management cadre is solely based on selection on merit and not solely on 'seniority', as alleged. It has been submittted that the 2nd party workman (V.H. Rawal) had applied for promotion to the management cadre in the year 1980, 1983 and 1985 but he was not selected in merit for the promotion to management cadre. More so, as per example of employees Sr. No. 14 of Ext. 33/1 he did not apply for promotion to management cadre was in workman cadre till his retirement,

Sl. No. 58 is still in non-managerial staff. Sl. No. 92 was a management staff since recruitment and Sl. No. 97 got promotion in the management cadre after selection on merit.

13. The 2nd party has relied upon the case laws of (1) Novartis Indis Ltd. and State of West Bengal (2009-11-LLJ-9 SC) on point of burden of proving no alternative employment of workman shifted on employer after initial discharge by the workman (2) Reetu Marbles and Prabhakant Shukla (2010-1-LLJ-305) (SC)- award of back wages upon termination of service is not automatic and cannot be granted mechanically. (3) Mahindra and Mahindra Ltd. and N.B. Narawada and others (2003-1-LLJ Bombay 520) power under section 11-A to be exercised by Labour Court only when satisfied that order of discharge or dismissal of workmen not justified as being harsh....(4) Gujarat State Road Transport Corporation Vs. D.B. Chauhan [2006(2) G.L.H. 64] regarding power of Labour Court under section 11-A of the ID Act.

14. On the other hand, the 1st party has relied upon a case law of Central Bank of India Vs. Mavji C. Lakum [2003(3) G.L.R. 2116] that section 11-A does not confer upon Labour Court, Tribunal to examine the punishment awarded to workman in order to make interference invariably rather such power u/s 11-A can be exercised only when the decision of employer is perverse or punishment is so disproportionate that it would shock the Judicial conscience.

15. I have gone through the entire documentary evidence of the 1st party Ext. 12 to 23. In view of the charge sheet as per Ext. 14 and 15 (English and Hindi version), the misconduct that was proved in domestic enquiry and as per findings to the inquiry report (Ext. 20) was of a serious nature as he (delinquent) had misused his office as an Engineering Assistant for private and personal trade of obtaining explosive licences for the customers of the corporation for his personal illegal gains. The workman V.H. Rawal in order to run the business registered his name with the Chief Controller of Explosives as a competent person in spite of remaining in corporation service as Engg. Assistant and he engaged himself in his personal trade/business activities during working hours, and used to approach the corporation clients in their office for his personal business which totally subversive of the discipline of the corporation I have gone through the punishment order of the Disciplinary Authority at Ext. 23 and I find that the D.A. had rightly considered that the misconduct committed by the delinquent is very serious in nature and so the punishment of dismissal with immediate effect under 29. 1(g) of the certified standing order of the Bharat Petroleum Corp. Ltd. does not appear to be harsh or disproportionate to the gravity of proved

misconduct of the delinquent under the charge sheet Ext. 14. English version, Ext. 15 Hindi version. So I do not find any reason to interfere in the order of punishment by invoking the power under section 11-A of the I.D. Act. More so, the evidence of the workman that he remained unemployed after dismissal does not hold good for making interference in the punishment awarded to him by the D.A. and to substitute any lesser punishment to him. More so, as per oral deposition of workman *vide* Ext. 29 *vide* para 6 he has already crossed the age of superannuation on 31.10.2010 much before his evidence. The case laws relied upon by the 2nd party are not applicable in the instant case.

16. In such view of the matter this issue is decided accordingly that the order of punishment of dismissal of the 2nd party from the services is not excessive or shockingly disproportionate to the gravity of misconduct.

17. **Issue No. (vi):-** In view of findings given in the forgoings, I further find and hold that the 2nd party workman is not entitled to get any relief.

18. **Issue No. (i) and (ii):-** The reference is not maintainable since the 2nd party workman has no valid cause of action.

19. **Issue No. (vii):-** The action of the management of Bharat Petroleum Corporation Ltd., Ahmedabad in dismissing Shri V.H. Rawal, Engg. Assistant *w.e.f.* 18.11.1996 is quite legal and justified.

20. **Issue No. (viii):-** This reference is dismissed on contest. No order as to any cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 7 जनवरी, 2014

का०आ० 285.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ सं० 166/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/01/2014 को प्राप्त हुआ था।

[सं० एल-20012/189/2001-आईआर(सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 7th January, 2014

**S.O. 285.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. 166/2001 of the Central Government Industrial Tribunal-cum-Labour Court No 1, Dhanbad as shown in the Annexure, in the

Industrial Dispute between the management of M/s BCCL and their workman, received by the Central Government on 07/01/2014.

[No. L-20012/189/2001-IR(C-I)]  
M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 1), DHANBAD

IN THE MATTER OF A REFERENCE u/s 10(1) (D) (2A)  
OF I.D. ACT, 1947

**Ref. No. 166 of 2001**

Employers in relation to the management of Bastacolla  
Area M/s. BCCL

AND

Their workmen

**PRESENT: Sri Ranjan Kumar Saran,**  
Presiding Officer

#### Appearances:

For the Employers. : Sri U.N. Lall, Advocate

For the workman. " Sri N.G Arun.Rep.

State: Jharkhand. Industry-Coal

Dated 2/12/2013

#### AWARD

By Order No. L-20012/189/2001-IR(C-I), dated 11/07/2001, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal

#### SCHEDULE

"Kaya M/S Bharat Coking Coal Limited ke prabandhan dawara Miritak Karmkar Tribhuwan Mistri's ke aashrit putra satyanarayan vishwakarma ko NCWA ke 9.4.0 ke tahat Anukampa ke adhar per sewa yojna nahi dena nayatik, bidhik, samajik awing tark ki dristi se uchit hai? Yadi nahi to ukt Ahrit kin labho ke hakdar hai?"

2. The case is received from the Ministry of Labour on 09.08.2001. After receipt of reference. The Sponsoring Union files their written statement on 13.11.2009. And the management also files their written statement- cum - rejoinder on 28.04.2010 thereafter both parties adduced their respective evidence.

3. The short point involved in the reference is that the son of the deceased workman filed an application for

compassionate appointment after his father's death during his service tenure.

4. The deceased workman's son applied for job three years after the death of his father and submitted the compliance. Thereafter his application was forwarded to head office and the same was not approved. Hence this dispute.

5. The plea taken by the management as there is delay the application of the workman is rejected. Usually there is no legal awareness amongst the factory workers, No one making them educated either the management or the Union or legal services Authority of State.

6. After the death of the workman while on duty what usually happen in a family is untold. The same should have been felt by the management in proper perspective.

7. Therefore considering all the above factors. it is felt the recommendation by the management should have been accepted. This Tribunal terefore directs the management to take him in the service after observing the minimum formalities.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 7 जनवरी, 2014

**कांआ 286.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ सं० 39/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/01/2014 को प्राप्त हुआ था।

[सं० एल-20012/36/1992-आईआर(सी-1)]

एम०के० सिंह, अनुभाग अधिकारी

New Delhi, the 7th January, 2014

**S.O. 286.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/1992) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s BCCL and their workman, received by the Central Government on 07/01/2014.

[No. L-20012/36/1992-IR(C-I)]

M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

**Reference No. 39/1992**

In the matter of reference u/s 10 (1) (d) (2A)  
of I.D. Act, 1947

Parties Employer in relation to the management of  
BCCL Koyla Bhawan

AND

Their workmen

**Present:** Sri R.K. Saran,  
Presiding Officer

**Appearances:**

For the Employers : None

For the workman : None

State: Jharkhand.

Industry-Coal

Dated 17/12/2013

**AWARD**

By order No. L-20012/36/92-IR (C-I) dated 19.05.92, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal.

**SCHEDULE**

"Whether the action of the management of M/S Bharat Coking Coal Ltd. Koyla Bhawan P.O. Koyla nagar, Distt- Dhanbad in denying the regularization of Shri Gulam Rabbani as Compounder is justified? If not, to what relief the workman is entitled and from which date."

2. After receipt of the reference both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence pass a No disputed Award is passed. Communicate to the Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 7 जनवरी, 2014

**का०आ० 287.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं०-1, धनबाद के पंचाट (संदर्भ संख्या 15/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/01/2014 को प्राप्त हुआ था।

[सं० एल-20012/44/2010-आईआर(सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 7th January, 2014

**S.O. 287.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of P.B. Area of M/s BCCL, and their workman, which was received by the Central Government on 07/01/2014.

[No. L-20012/44/2010-IR(CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO. I, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A)  
of I.D. Act, 1947.

Reference No. 15 of 2011

Employer in relation to the management of  
P.B. Area of M/s BCCL

AND

Their workman

**Present :** Sri R.K. Saran,  
Presiding Officer

**Appearance :**

For the employers : Sri S.K. Behra, Asstt. Manager

For the Workman : Sri Sachidanand Singh, Rep.

State : Jharkhand

Industry : Coal

Dated 4/12/2013

**AWARD**

By order No. L-20012/44/2010-IR(CM-I) dated 10.03.2011 the Central Government in the Ministry of Labour has, in exercise of power conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

**SCHEDULE**

"Whether the action of the management of Kenduadih Colliery of M/s BCCL in not providing employment to the dependent of Late Ram Briksh Dusadh, Ex-Security Guard on compassionate ground to the provision of NCWA is fair and justified? To what relief the dependent of late Ram Briksh Dusadh is entitled to?"



2. The case is received from the Ministry of Labour on 08.04.2011. After receipt of reference, both parties are noticed. They appeared through representative. The Sponsoring Union files their written statement on 17.9.2012. Thereafter the management also files their written statement-cum-rejoinder.

3. Heard the case on preliminary point. It is the case of dependent employment. The workman submitted that after the death of his father on duty, he is not taken in job as the family is in harness.

4. On the other hand the management representative submitted, that the claimant for the job was sent for medical examination as he is found unfit, then he is denied the job. It is submitted by the Union leader of the workman that another son of the deceased workman has applied for the job, but he is not referred to medical board.

5. After hearing the contentions from both sides, and Considering the facts and circumstances of this case, it is directed to the management, that the management of Kenduadih Colliery of M/s BCCL in not providing employment to the dependent of Late Ram Briksh Dusadh, Ex-Security Guard on compassionate ground to the provision of NCWA is not fair and justified. It is also directed to the management to refer the second son of the deceased workman for medical examination. If he is found fit, he be taken to job. If not, the widow of the deceased be given monetary compensation as per norms.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 7 जनवरी, 2014

का०आ० 288.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं०-2, धनबाद के पंचाट (संदर्भ संख्या 136/1996) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/01/2014 को प्राप्त हुआ था।

[सं० एल-20012/356/1995-आईआर(सी-I)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 7th January, 2014

**S.O. 288.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 136/1996 of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL, and their workman, which was received by the Central Government on 07/01/2014.

[No. L-20012/356/1995-IR(C-I)]  
M. K. SINGH, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

**Present:** Shri Kishori Ram,  
Presiding Officer.

In the matter of an Industrial Dispute under  
Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 136 OF 1996.

#### PARTIES :

Joint General Secretary,  
Rastriya Colliery Mazdoor Sangh, Dhanbad  
Vs General Manager, Sudamdih Area of  
M/s BCCL, Dhanbad

#### APPEARANCES:

On behalf of the : Mr. N.G. Arun, Rep.  
workman/Union of the workmen

On behalf of the : Mr. D.K. Verma, Ld.  
Management Advocate

State : JHARKHAND

Industry : Coal

Dhanbad, the 20th May, 2013.

#### AWARD

The Government of India, Ministry of Labour, in exercise of power conferred on them under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following disputes to this Tribunal for adjudication *vide* their Order No. L-20012/356/95-IR(Coal-1) dt. 20.11.1996.

#### SCHEDULE

"Whether the demand of the Union for promotion of Shri Mumtaj Ahmed & 16 others (as per list but not enclosed) as Fitter-cum-Operator in Cat. V is legal and justified. If so, to what relief are these workmen entitled."

2. The case of the Rastriya Colliery Mazdoor Sangh for the workmen Sl. No. 1 Mumtaj Ahmed & 16 others namely Sl. Nos. 2. Ayodhya Paswan, 3. Bara Ramashray Paswan, 4. Ganpat Dusadh, 5. Ram Das Ram, 6. Ram Jatan Singh, 7. Indradeo Paswan, 8. Haldar Marandi, 9. Nandlal Prasad, 10. Satish Rawani, 11. Lal Keshwar Nonia, 12. Ram Chandra Paswan, 13. Janardhan Shekhar, 14. Narayan Yadav, 15. Biswanath Kumar Bouri, 16. Janardan Gond and 17. Ram Shankar Prasad (as per list enclosed) is that Sudamdih Coal Washery is one of the Establishments of M/s Bharat Coking Coal India Ltd., at Sudamdih, P.O. Same (Dhanbad) engaging a large number of workmen in various works. Those 17 workmen have been engaged on different dates from 1.8.1982 to 2.1.1990. They were initially engaged as helpers Category II except Ganpath Dusadh who was placed in Cat. III. They have been working as the Fitter-cum-operator during the course

of their employment, but they are not being placed properly as evident from the facts that the Management has upgraded S/Shri Mumtaz Ahmed, Ayodhya Paswan, Bara Rameshwar Paswan, Satish Rewaani and Lal Keshwar Nonia (Sl. No. 1,2,3,10 and 11 respectively) in Cat III and Sri Ganpat Dusadh (Sl. No. 4) in Cat IV, *w.e.f.* 1.7.1993. But the Management has violated the provision of N.C.W.A. as to the payment of their wages as prescribed therein. Whereas in all fairness and the circumstances, all the workmen must have been placed in Cat V *w.e.f.* 1.7.1993, but the management by not doing it has deprived them of their legitimate grade consisting financial loss and consequential effects in their career.

3. Further alleged in behalf of the Union that Sudamdih coal Washery is a sophisticated installation of mechanical & Electrical component requiring constant handling by experienced hands so as to properly function of the plant and machineries round the clock. In view of highly mechanization of the installation in the Coal Mining Industry in general and Coal Washing Plants in particular, the workman engaged for such job should be paid as per the fixation of pay of scale skilled, semi skilled and highly skilled personnel as projected in the NCWA in accordance with the direction/implementation Instruction of the JBCCI as per mandatory agreement. The Management as one of the largest Public Sector Undertakings in the Central should comply with Implementation Instruction of J.B.C.C.I. to which both are parties and the workman in a Public Sector Undertaking like BCCL should not be denied their legitimate pay scale/grade and other benefits for nature of their done job for benefit of it. The Union raised the issue several times before the management, and lastly raised the matter before the ALC®, Dhanbad as per letter dt. 5.9.94, but the failure in its conciliation proceeding resulted in the reference for an adjudication. Thus the demand of the Union for promotion/placement of Shri Mumtaz Ahmed & 16 others in Cat. V of NCWA, *w.e.f.* 1.7.93 alleged to be justified for upgradation above Cat. V, on completion of four years of service therein, for placement in Seniority List as their service effective dates of their joining between 1.8.82 and 2.1.90, for differences of wages thereof and for other benefits and consequential benefits with due cost of the procedure is justified.

4. The Union in its rejoinder specifically denying the allegations of the O.P./Management has stated that the subject matter is not of promotion, but for fixation in the promotion grade and scale of pay. The two concerned workmen have been performing the duties of Lamp Mazdoor which is a semi skilled job and to be paid in Cat. I rate of wages in terms in NCWA. Both the workmen concerned though designated as Lamp Mazdoor have been regularly performing the duties of Lamp Issuer since the year 1967, but were regularized in Clerical Grade III in the year 1979 in place of the said year when they had

started working at the Lamp Issuer and in respect of the some other workmen, their comparison as Junior to both the workmen is illegal. In that regard, the Management malafide acted by quietly shifting the other workman to old Incline as M.T.K./Attendance Clerk and favourably placing them as junior to the two concerned workmen. The job of the M.T.K./Attendance Clerk is different from that of Lamp Issuer who also maintains records and registers. The formula of pay fixation depends in the nature of the job performed by individual workmen and their seniority in services, but the regularization of Clerk Gr. II in regard to S/Shri P.N. Sheel, K.D. Singh, Ram Nagina Yadav and Hari Ram in Clerical Gr. II in the year 1984 has been illegally done, by-passing the claim of the two workmen, and the favouritism clearly stands out in posting the two workmen in Clerk Gr. II in the year 1991 as contrasted with the regularization of their juniors in Clerk Gr. II in the year 1984. The Union though regularly represented about it to the management, they raised the dispute earlier than 1994. The Management has done both concerned workmen Fulchand Paswan and Ratan Napit in regularization in Clerk Gr. II and they are entitled to their placements in that grade with rate of wages *w.e.f.* 1.3.1984 after their appropriate position in Seniority List, to payment of differences of between Clerk Gr. III and Gr. II between 1.3.1984 and 13.8.1991.

5. Whereas the contra pleaded case of the Opp./Management with categorical denials is that the present industrial dispute is unmaintainable in law and facts, as the demand of the Union is for promotion of certain workers, whereas the promotion is managerial function of the Employer, and it cannot be claimed as a right of any employee. The promotion is effected as per Cadre Scheme against available vacancy formulated by JBCCI. Accordingly the management of Sudamdih Coal Washery already promoted 26 employees from Cat. II to Cat. V on the recommendation of the Departmental Promotion Committee (DPC), and according to the Presidential Direction for Scheduled Caste and Scheduled Tribe. It is also alleged all the workmen and all others were given opportunity to appear before the Departmental Promotion Committee (DPC) all of them appeared before the D.P.C., but only the names of eight employees S/Shri Nandalal Prasad (2) Satish Rewani (3) Bara Ramashray Paswan (4) Haldhar Marandi (5) Mumtaz Ahmad (6) Ayodhya Paswan (7) Indradeo Paswan and (8) Nandlal Prasad were recommended by the D.P.C. and accordingly they were promoted, but other employees being failure in securing qualifying marks fixed by the D.P.C. failed to get position in order of merit. Further alleged that the Union has no locus standi to raise the I.D. on behalf of the workmen S/Shri Nandalal Prasad, Haldhar Marandi, Indradeo Paswan, Bara Ramashray Paswan and Satish Rewani, they had not authorized the Union for the demand for their

promotion. Hence the workmen concerned are not entitled to any relief.

6. The O.P.../Management in its rejoinder specifically denying the allegations of the Unions, has stated that the implementation Instructions is only directive, not mandatory. The J.B.C.C.I. is not permitted to involve in the Managerial function of the Employer. The Management is performing its duty as per the guidelines, rules, regulations and directives of the Competent Authority. Thus, the demand of the Union is not justified.

### FINDING WITH REASONS

7. In the instant reference WWI Biswanath Kr. Bauri, of the workmen, WW2 Sheoji Prasad, the Branch Secretary for the Union concerned, and WW1 Sri N.R. Chatterjee, Dy. Manager (Pers.), Sudamdih Washery for the O.P./Management have been examined respectively.

WW1 Biswanath Kr. Bauri (Sl. No. 15) states to have been working as Fitter Helper for 16 years at Sudamdih Washery, and drawing wages under Cat. III as per his Service Linked Upgradation (SLU), but have not got his promotion to Higher Category; out of 17 workmen as referred, Sl. No. 6 Ram Jatan Singh already superannuated from service, and some workmen rendering their service equal to his service have got their promotion in Cat V. But his clear cut admission is that promotion is effected as per Cadre Scheme. There is no channel to get promotion to Cat. III from Cat. II Fitter Helper; as per NCWA there is no scope for giving direct promotion to Cat. IV or Cat. V Fitter Helper from Cat. II, and it is indisputable that their promotion in the category is done through D.P.C. (Departmental Promotion Committee). He (WW1) denies to have been directed by the Management to face the D.P.C. for his promotion from Cat. II Fitter Helper.

8. In support of the Reference case, WW2 Sheoji Prasad, as the Branch Secretary of the Union as well as the Fitter-cum-Welder of the aforesaid Sudamdih Washery has stated that their Union had raised the reference for the claim of the workmen concerned. According to him, out of 17 workmen Ram Jatan Singh Sl. No. 6 already retired from service, but barring five workmen Sl. Nos. 13 to 17 (S/Shri Janaardan Sekhar, Narayan Yadav, Biswanath Kumar Bouri, Janardan Gond and Ram Shankar Prasad respectively) whose cases were not considered; the management gave promotion to the rest eleven workmen as per list in Cat. V Fitter Operator as per Office Order dt. 20.6.2000 (its photogopy marked as Ext. W. 1). So the said workmen are legally entitled to their promotion in that category. But the witness (WW2) has also admitted the promotion of the said eleven workmen as per reference Sl. No. 1 to 12 (excluding Sl. No. 6 being retired) on the recommendation of the D.P.C. which which did not do so

in respect of five workmen Sl. No. 13 to 17, so the claim of the Union exists only concerning the five workmen only.

9. It is remarkable to note the Office Order dt. 20.6.2000 (Ext. W.1) proved by W.W.2 Sheoji Pd., the Branch Secretary of the Union, has no mention of the workmen except Lal Keshwar Nonia (Sl. No. 11). However, in view of the admission of MWI N.R. Chatterjee, Dy. Manager (Pers) of Sudamdih Washery for the Management that "during the pendency of the case all these workmen on the recommendation of the D.P.C. have been promoted as Fitter cum Operator in Cat. V *w.e.f.* different relevant dates by the management and some of them as pleaded about eight workmen namely (1) S/Shri Nandlal Prasad, 2. Satish Rewani, 3. Bara Ramashray Paswan, 4. Haldhar Marandi, 5. Mumtaz Ahmad, 6. Ayodhya Paswan, 7. Indradeo Paswan and 8. Nand Lal Prasad as under Para 6 of the written statement—rejoinder of the Management have already got their promotion in Cat. V in course of time, so claim of the Union for promotion of the workmen in Cat. V *w.e.f.* 1.7.1993 is not justified.

10. On due consideration of the materials and admissions of the management, I came to conclusion that since during the pendency of the reference all these workmen on the recommendation of the D.P.C. have been promoted as Fitter cum Operator in Cat. V *w.e.f.* different relevant dates, and some of them (eight ones as pleaded under Para 6 of the management's written statement—rejoinder) have already been promoted in Category V in course of time.

In result, it is hereby in terms of the Reference,

### ORDERED

That the demand of the Union for promotion of Sri Mumtaz Ahmad and 16 others as Fitter-cum-Operator in Cat V as legal and justified is no longer existent, all the 17 workmen concerned have been promoted to Cat. V on the recommendation of the D.P.C. in due course of time but not *w.e.f.* 01.07.1993 as claimed by the Union, as none of them was qualified earlier by the D.P.C. for their ineligibility. The workmen concerned are not entitled to any relief as demanded by the Union concerned. Let the copies—one soft and one hard of the Award be sent to the Ministry of Labour & Employment, Government of India for information and needful.

KISHORI RAM, Presiding Officer

नई दिल्ली, 7 जनवरी, 2014

का०आ० 289.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टी एस एल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध

में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं०-1, धनबाद के पंचाट (संदर्भ संख्या 29 of 2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/01/2014 को प्राप्त हुआ था।

[सं० एल-20012/65/2007-आईआर(सीएम-1)]  
एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 7th January, 2014

**S.O. 289.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 29/2007 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial dispute between the management of M/s. TSL and their workmen, received by the Central Government on 07/01/2014.

[No. L-20012/65/2007-IR(CM-I)]  
M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF REFERENCE U/S 10(1) (D) (2A)  
OF I.D. ACT., 1947

#### Ref. No. 29 of 2007

Employers in relation to the management of  
Bhelatand "A" Colliery of Tata Steel Ltd.

AND

Their workmen

Present: **Sri Ranjan Kumar Saran,**  
Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the workman : Sri Niraj Kumar Singh, Advocate

State : Jharkhand Industry: Coal

Dated 9/12/2013

#### AWARD

By Order No. L-20012/65/2007-IR (CM-I), dated 15/31.05.2007, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

#### SCHEDULE

"Whether the action of the management of Bhelatand "A" Colliery of M/S Tata Steel Limited in dismissing the services of Shri Ishwar Prasad Rajak, Haulage Engine Operator, w.e.f. 27.09.2003 is justified and legal? If not, to what relief is the concerned workman entitled?"

2. The case is received from the Ministry of Labour on 03.07.2007. After receipt of reference, both parties are noticed, the workman files their written statement on 10.07.2007. The management files their written statement on 23.07.2008. Rejoinder and documents are also filed by the parties.

3. The short point involved in this reference is the workman was not performing his duty fully and was cheating at the workplace. The workman was a time rated workman without working he was getting his salary for which the management dismissed him.

4. On the other, the workman submitted that he is a dutiful workman and has been performing his duty sincerely. If it is the case of the parties, it is felt by this tribunal, the workman be engaged as a piece rated workman, in the similar job.

5. Therefore whatever work he will perform will get his wage accordingly. To that effect the workman has also filed an undertaking to work as piece rated. Workman in the similar capacity. Hence the workman be reinstated in service without any back wages, whatsoever as a piece rated workman.

R.K. SARAN, Presiding Officer

नई दिल्ली, 7 जनवरी, 2014

**का०आ० 290.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं०-1, धनबाद के पंचाट (संदर्भ संख्या 10 का 1992) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/01/2014 को प्राप्त हुआ था।

[सं० एल-20012/201/1991-आईआर(सी-1)]  
एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 7th January, 2014

**S.O. 290.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 10/1992 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial



dispute between the management of M/s BCCL and their workmen, received by the Central Government on 07/01/2014.

[No. L-20012/201/1991-IR(C-I)]  
M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

#### Ref. No. 10/1992

In the matter of reference U/S 10 (1) (d) (2A)  
of I.D. Act, 1947

Employer in relation to the management of  
New Laikdih OCP, C.V. Area M/S BCCL

AND

Their workmen

Present: **Sri R.K. Saran, P.O.**

Appearances:

For the Employers : Sri S.N. Ghosh, Advocate

For the workman : None.

State : Jharkhand

Industry: Coal

Dated 12th Nov. 2013

#### AWARD

By Order No. L-20012/201/1991/IR (C-I), dated Nil, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

#### SCHEDULE

"Whether the action of the management of M/S BCCL, in paying wages for the period from 27.10.88 to 30.12.88 to Shri Gopinath Mondal foreman Incharge, New Laikdih O.C.P. is justified? If not to what relief the workman is entitled?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R.K. SARAN, Presiding Officer

नई दिल्ली, 7 जनवरी, 2014

**कांआ 291.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं०-1, धनबाद के पंचाट (संदर्भ संख्या 255/2000) को

प्रकाशित करती है, जो केन्द्रीय सरकार को 07/01/2014 को प्राप्त हुआ था।

[सं० एल-20012/80/2000-आईआर(सी-1)]  
एम०के० सिंह, अनुभाग अधिकारी

New Delhi, the 7th January, 2014

**S.O. 291.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 255/2000 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial dispute between the management of M/s BCCL and their workmen, received by the Central Government on 07/01/2014.

[No. L-20012/80/2000-IR(C-I)]  
M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUS- TRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF REFERENCE U/S 10(1) (D) (2A) OF  
I.D. ACT., 1947

#### Ref. No. 255 of 2000

Employers in relation to the management of East  
Katras Colliery of M/S BCCL

AND

Their workmen

**Present :** Sri Ranjan Kumar Saran,  
Presiding Officer

**Appearances:**

For the Employers : Shri D.K. Verma, Advocate

For the workmen : Shri R. Ranjan Prasad, Advocate

State : Jharkhand

Industry: Coal  
Dated 18/10/2013

#### AWARD

By Order No. L-20012/80/2000-(C-I), dated 07.09.2000, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

#### SCHEDULE

"Whether the action of the management of East Katras Colliery of M/S BCCL in dismissing Sri Ram Swaroop Nonia from the services of the company w.e.f. 25.12.97 is justified? If not, to what relief is concerned workman entitled?"

2. The case is received from the Ministry of Labour on 25.09.2000. After receipt of reference both parties are noticed. The workman files their written statement on 20.07.2009. This is a case of dismissal of the workman.

3. Before receipt of the reference the workman has died. The ground taken by the workman's wife that due to long illness the workman succumbed to the ailments. Ill health may come for any person, while on job or outside. Stringent action like dismissal is uncalled for. The dismissal of workman Ram Swaroop Nonia is therefore set aside.

4. The workman is to be taken in job. But since the workman died, it is not at all possible. Therefore it is ordered, when the dismissal is set-aside, the death benefits be given to the workman.

5. The widow of the workman has also filed an application, she be given monetary compensation, in lieu of dependant employment.

6. Considering the facts and circumstances of this case, I hold that the action of the management of East Katras Colliery of M/S BCCL in dismissing Sri Ram Swaroop Nonia from the service of the company w.e.f. 25.12.97 is not justified? Hence death benefit alongwith monetary benefits if any be given the net kith of the workman.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 8 जनवरी, 2014

**कांआ 292.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबन्ध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, धनबाद के पंचाट संदर्भ संख्या 117/01 को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/01/2014 को प्राप्त हुआ था।

[सं एल-12012/487/2000-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 8th January, 2014

**S.O. 292.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 117/01) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 07/01/2014.

[No. L-12012/487/2000-IR(B-I)]

SUMATI SAKLANI, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, DHANBAD

In the matter of reference U/S 10(1)(d) (2A)  
of I.D. Act, 1947

**Ref. No. 117 of 2001**

Employer in relation to the management of  
State Bank of India, Patna

AND

Their workmen.

**Present:** Sri Ranjan Kumar Saran,  
Presiding Officer.

### APPEARANCES

For the Employers : Sri S.N. Goswami, Advocate

For the Workman : Sri D.K. Jha, Advocate

State : Jharkhand.

Industry: Banking

Dated 19/04/2013

### AWARD

By Order No. L-12012/487/2000-IR (B-I), dated 16/05/2001, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

### SCHEDULE

"whether the action of the management of State Bank of India, Patna is not considering the workman Shri Mukesh Pandey for re-employment, while making appointment of fresh hand i.e. S/Sh. Rabindra Kr., Koushal Kr., Sujit Kr., Dr. Awadesh Kr. Singh, Mahendra Roy, Kumar Murlidhar, Bindeshwar Paswan, Sanjal Pandit & Jai Prakash Ojha, is justified?, If not what relief the workman is entitled?"

2. The case is received from the Ministry of Labour on 04.06.2001. After receipt of reference, both parties are noticed, the workman files their written statement and document. And the management files their written statement-cum-rejoinder on 13-02-2002. The point involved in the reference is to workman has been terminated from his services without due process of Law, whereas the claim of the management is the workman was not the regular workman as such the action of the Bank management was justified.

3. The case of the workman that he was given employment in the bank from 16.07.91 to 14.08.91 and again from 02.05.92 to 30.07.92. Subsequently from 30.07.92

to 30.07.93. The workman has filed the photo copy of the appointment order of first posting Ext. M-2 Second phase of appointment order filed by the workman Ext. M-3 for 90 days. So far as the 3rd phase of appointment letter is concerned, it has been stated by the workman, he was not given any appointment letter. The management in his counter submitted at paragraph 3&4.

4. Parawise reply that the remuneration was paid to the workman from the petty cash through staff welfare fund, but it is the case of workman that, since there was exigency bank appointed the workman. Subsequently the workman was removed or not allowed to work as he did not come within the purview of the bank circulars. But the learned counsel for the workman submitted that the last phase of the work *i.e.* from 03.07.92 to 30.07.93 more than 240 days. Since the workman has worked for more than 240 days, the Industrial Disputes Act is applicable to the workman. The Bank circulars whatsoever can never over ride the I.D. Act.

5. The Preliminary objection raised by the bank, that since one earlier dispute between the workman and the management ended, in a no dispute award, the present dispute is not maintainable, is not the correct position of Law because, in a no dispute award, the dispute neither heard and finally decided. Moreover there is no application of res-judicata.

6. The MW-1, the Officer of the Bank, has not stated in his examination in chief that, the workman did not work from 03.07.92 to 30.07.93. On that aspect there is no evidence at all, as to whether the workman was getting monthly salary or daily wages. But in cross examination, he has stated that the workman was terminated sometimes in the year 1993. Therefore claim that the workman was working continuously for a period of 240 days is accepted.

7. Since the workman has been terminated after 240 days of working in an organization, Section 25(h) of I.D. Act applicable. The Apex Court decision reported in 2011 SCW 3455 is clearly applicable in this case. The placitum of which is quoted below:—

The Source of employment, the method of recruitment, the terms and conditions of employment/ contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of section 2(s) of the Act. The definition of the workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing

whole time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman (Para 13,14).

8. Moreover in this case Sec 25 F and I.D. Central Rules 77 & 78, has not been complied *i.e.* 7 days prior notice of termination was not given. Therefore termination of the workman is illegal. Since termination is illegal he is to be absorbed in the bank management.

9. Considering the fact and circumstance, I hold that the action of the management of State Bank of India, Patna is not considering the workman Sri Mukesh Pandey for re- employment, while making appointment of fresh hand is not justified. Hence the workman be absorbed in the bank but without back wages, within 10 days after the award is notified in the gazette.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 8 जनवरी, 2014

का०आ० 293.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, धनबाद के पंचाट संदर्भ संख्या 209/1999 को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/01/2014 को प्राप्त हुआ था।

[सं. एल-12012/288/99-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 8th January, 2014

S.O. 293.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 209/1999) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 07/01/2014.

[No. L-12012/288/99-IR(B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

(No. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1)(D) (2A)  
OF I.D. ACT, 1947,

Ref. No. 209 of 1999

Employers in relation to the management of  
State Bank of India, Daltaganj;

AND

Their workmen.

**Present:** Sri Ranjan Kumar Saran,  
Presiding Officer

**Appearances:**

For the Employers : Sri S.N. Goswami, Advocate

For the Workman : Sri D.K. Verma, Advocate

State : Jharkhand.

Industry: Banking

Dated 19/04/2013

**AWARD**

By Order No. L-12012/288/99-IR-(B-I), dt. 08/12/99, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

**SCHEDULE**

"Whether Shri Ajay Kumar, Messenger worked for more than 240 days with the State Bank of India, Daltangunj? If so whether the action of management of Bank in terminating the service of Sri Ajay Kumar w.e.f. 15.10.97 is justified? If not to what relief the workman is entitled to?"

After receipt of the reference, both parties are noticed. They submitted Written statement and rejoinder. The case fixed for evidence by the workman but workman did not turn up. Therefore it is felt that there is not dispute between the parties. Hence a "No Dispute" award is passed.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 8 जनवरी, 2014

**का.आ. 294.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअरपोर्ट अथॉरिटी ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2 दिल्ली के पंचाट (संदर्भ संख्या 59/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/01/2014 को प्राप्त हुआ था।

[सं. एल-11012/8/2004-आईआर (एम)]  
जोहन तोपनो, अवर सचिव

New Delhi, the 8th January, 2014

**S.O. 294.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government publishes the Award (Ref. No. 59/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, No. 2, Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Airport Authority of India and their workman, which was received by the Central Government on 6/1/2014.

[No. L-11012/8/2004-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT-II, DELHI**

**Present :-** Shri Harbansh Kumar Saxena

**ID No. 59/2006**

Sh. K.N. Pandey & 84 others

*Versus*

Airport Authority of India

**AWARD**

The Central Government in the Ministry of Labour vide notification No. L-11012/8/2004-IR(M) dated 27/07/2006 referred and modified on 10.10.2006 the following industrial Dispute to this tribunal for the adjudication:—

"Whether the Industrial dispute raised by K.N. Pandey and 84 others (List attached against the management of Airport authority of India over re-engagement in service with fullback wages and regularization of their services is justified and fair? If so, what relief they are entitled to?"

On 31/07/2006 reference was received in this tribunal. Which was register as I.D. No. 59/2006 and claimant were called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workmen/Claimants appeared and filed claim statement on 06/12/06. Wherein they submitted as follows:-

1. That the present industrial dispute is being raised by the workmen above named as specified in the memo of parties against the management above named for reengagement of their services with the management directly or through its agents with full back wages and regularization in service with the management above named.

2. That the present industrial dispute is pending adjudication before this Hon'ble Tribunal pursuant to reference order dated 10.10.2006 passed by the appropriate government on the following terms of reference:



"Whether the industrial dispute raised by Sh. K.N. Pandey and 84 others (List Attached) against the management of Airport Authority of India over re-engagement in service with full back wages and regularization of their services is justified and fair? If so, what relief they are entitled to?"

3. That the workmen herein are all ex-servicemen and were firstly engaged with the management no. 1 and 2 above named *w.e.f.* 15.01.1994 as Security services at the Cargo Complex, Indira Gandhi International Airport, Delhi. That the workmen herein were appointed after due ascertainment of their eligibility and fitness for the job and in accordance with the rules and regulations prevalent at the time for appointment of security guards.

4. That the workmen above named were discharging the duties of securing the cargo complex with their specialized services and experience while in employment of management no. 1 and 2. That the workmen herein were appointed against vacancy sanctioned posts available with the management but instead of direct appointment the workmen herein were employed after the artificial introduction of the contractor.

5. That *vide* notification dated 9th December 1976, issued under the Contract Labour (Regulation and Abolition) Act, 1970, the central government had prohibited the employment of contract labour in the management establishment in the job/process/employment of 'watching the buildings'. That in terms of the said notification, the security guards employed by the management above named at its establishments/airports in Chennai and Kolkata were regularized in service. Even the workmen above named were asked to fill up the prescribed forms and file required affidavits for the regularization of their services with the management above named.

6. That, however, on account of the reluctance of the management to regularize the services of the workmen above named for extraneous reasons, the workmen approached the Delhi High Court *vide* CWP No. 4211/1997 for regularization of their services. The said writ petition was dismissed *vide* orders dated 15.03.2000 on the grounds that the workmen herein are not covered under the clause 'watching the building'. In LPA No. 203/2000 filed against the judgment/order dated 15.03.2000 in CWP 4211/1997 liberty was given to the workmen herein to raise an Industrial dispute in accordance with the law as laid down in *Steel Authority of India Vs. National Union Waterfront Workers* 2001 (7) SCC 1. The said liberty was further upheld in SLP No. 196/2000 disposed off by the Hon'ble Apex Court on 18.01.2002. Further in WP(C) 1705/2000 the High Court of Delhi had directed as under:

"....The question as to whether or not the contract is only a mere ruse or camouflage to evade compliance with various beneficial legislations or as to whether or not the petitioners are entitled to be regularized in service with the principal employer as, in my opinion, a disputed question of fact and cannot be appropriately dealt with in this petition and the petition, therefore, cannot be entertained. However, the petitioners will be at liberty to raise an Industrial dispute about the regularization of the services of the petitioners and as and when such a dispute is raised the industrial court will enquire into the question as to whether or not the contract entered into between the principle employer and the contractor is not genuine or is mere ruse or camouflage."

9. That subsequently the workmen herein had issued a legal/demand notice dated 3.04.2003 to the management above named for the reengagement of their services with the management as regular employees with the back wages. However, the management herein did not respond to the same and the workman above named raised an Industrial dispute before the conciliation Officer which has resulted in the instant reference.

10. That the workmen above named discharges their duties to the full satisfaction of the management above named during the course of their employment and gave no cause of complaint from any corner whatsoever during their employment.

11. That during the course of their employment the workmen above named worked under the direct supervision and control of the management no. 1 and 2 above named and its designated officers. The day to day deployment of the workmen above named and the duties to be performed by them were issued by the regular employees of the management above working under the Deputy General Manager (Security), IGI Airport.

12. That the very nature of contract between the management above named and the contractor was such that the said contract was not for the production of any desired result but for the supply of labour. Infact, in the said contract itself the no. of labour to be employed and duty hours were specified by the management itself.

13. That infact, the contractor was introduced in between by the management above name with the sole motive of depriving the workmen herein the status of regular employees of the management. By introduction of the contractor an artificial veil was created so as to depict as if the workmen herein were employees of the contractor whereas the management directly extracted the

work of a regular nature from the workmen herein as its regular employee.

14. That the work doen/duties discharged by the workmen herein were perennial in nature and sufficient work is available with the management for employment of the workmen herein. Infact, in other establishments belonging to the management itself the said job is performed by regular employees of the management who were absorbed after being initially employed as contract labour.

15. That however, with a *mala fide* motive of punishing the workmen herein for dragging the management of court with their demand for regularization of services, the management arbitrarily and without any reason terminated the services of the workmen herein in the garb of engaging a fresh contractor *w.e.f.* 11.03.2002.

16. That prior to their disengagement/termination from service the workmen herein had been in continuous employment with the management above named since 15.01.1994.

17. That the repeated opposition of the workmen to the unfair labour practice of the management of depriving them of the status of regular workmen had irked the management which with a *mala fide* motive of frustrating the claim of the workmen engaged a fresh contractor to discharge the duties hitherto performed by the workmen herein without any reason. Infact, even the contract between the management above named and the contractor had not expired on 11.03.2002 when the services of the workmen herein were substituted for a fresh set of contract workmen.

18. That the introduction of the new contractor *w.e.f.* 11.03.2000 was a *mala fide* act on the part of the management to frustrate the claim of the workmen herein. Even if a new contractor was to be introduced the workmen herein being in continous service of the managemnt since 1994 was entitled to preference in employment even with the new contractor. The disengagement of the workmen herein under the garb of engagement of a new contractor amounts to *mala fide* termination of the services of the workmen herein.

19. That he workmen herein are entitled to be re-engaged in service with the management above named and further are entitled to be regularized in service with the management above named from the date of their initial appointment.

20. That during the pre reference stage when the matter was sub judice in WP(C) 15721-56 before Delhi High Court management no. 3 has been appointed by management no. 1 as its agent.

21. That no legal dues whatsoever, including retrenchment compensation, notice wages etc. was paid to the workmen herein consequent upon their disengagement/termination.

22. That consequent upon the lineament/termination of their services the workmen herein have been unable to secure any alternate source of employment despite their best efforts and are dependent upon their ex-servicemen pension for their survival.

23. That without prejudice to the submission that the workmen herein constitute a substantial no. of workmen in themselves to give the character of an 'industrial dispute' to the instant dispute, the present industrial dispute is duly sponsored by the AICPWD (MRM) KS (Regd.), 4823, Balbir Nagar Extn., Gali No. 13, Shahdara, Delhi 110032 *vide* its resolution dated 27.05.2003 and the said is a Union connected with the management establishment.

On the basis of contents mentioned in aforesaid paragraphs Labour/Chaimant prayed as follows:—

1. Re-engage the workmen herein in service with full back wages and consequent reliefs.

2. Regularize the workmen herein in service from the date of their initial appointment with full back wages and all consequent reliefs.

3. Award costs of this litigation to the workman herein. Pass such other order as this Hon'ble Court may deem fit and proper in the interests of justice.

**In reply to claim statement management filed Written Statement. Wherein it is submitted as follows:—**

#### **PRELIMINARY SUBMISSIONS:—**

1. That there is no master-servant relationship between the Claimants and the Opposite Party, however despite the above, the Claimants have been approaching before the Hon'ble Industrial Tribunal for seeking regularization of their services with the Opposite Party.

2. That the petition of the claimants is an abuse of the process of law and the petition prima facie merits dismissal in the light of Hon'ble Supreme Court judgment in Steel Authority of India case. The Claimant are repeatedly misusing the process though all the cases relating to security personnel have been dismissed. It is further submitted that the claimants initially filed two writ Petitions Nos. 4211/97 & 4292/97 titled Deo Sunder Jha Vs. UOI & Ors and B.I.L Mandal & ORs. Vs. UOI & Ors. which were dismissed by the Hon'ble Mr. Justice A.K. Sikri of the High Court of Delhi after examining all the aspects/factors related to the case and subsequently LPAs

Nos. 136/2000 & 203/97 filed against the above referred judgments were also been dismissed on merit by the Division Bench of High Court of Delhi. Another petition No. 1705/2000 was filed by the claimants titled K.N. Pandey & Ors. Vs. UOI & Ors. which was also dismissed by the Hon'ble High court of Delhi. The claimants again filed as SLP No. 196/2002 titled B.I.L Mandal & other Vs. UOI & Ors. which was dismissed by the Division Bench of the Hon'ble supreme Court of India in view of Supreme Court judgment in Steel Authority of India case. The claimants against approached the Hon'ble High Court of Delhi under CWP No. 772/2002 titled A.S. Bisht & Anr Vs. UOI & Ors. which was also dismissed as withdrawn. All the above Writs, Appeals and SLP were dismissed after consideration of all the aspects by the Hon'ble Courts, therefore the petition deserves dismissal on the above grounds. Further, the security personnel are engaged by the agency (ies) sponsored by the Directorate General of Resettlement, Ministry of Defence, Govt. of India under a resettlement scheme/measure for ex-servicemen. This Hon'ble Court in CWP Nos. 4292/97 & 4211/97 has held that the very purpose will be defeated for which the Directorate General of Resettlement, Ministry of Defence was formed & rehabilitation scheme framed by the Govt. in case the plea of the Claimant is accepted.

3. Further, M/s. UPBSKN Ltd., is no more in the Cargo Terminal. The contract awarded to M/s R-4 security services who had taken over the Security Contract *w.e.f.* March, 2002 has also expired on 14.11.2004. A new security agency namely M/s. Ex-servicemen Airlink Transport Services has been awarded the Security services contract *w.e.f.* 14.11.2004 (midnight) after being sponsored by the Directorate General of Resettlement, Ministry of Defence, Govt. of India. It is also pertinent to mention herein that almost all the claimants are not working in Cargo Terminal.

4. That the Claimants are not entitled to any relief being the employees of the U.P. Bhutpurva Sainik Kalyan Nigam Ltd., a State Govt. Undertaking sponsored by the Directorate General of Resettlement, Ministry of Defence, Govt. of India. In this regard, the order of the Hon'ble High Court is relevant wherein the Hon'ble Court has held that the very purpose of the Resettlement Schemes of Ex-servicemen would be defeated, if their contention is acceded to.

5. That the Claimants have not approached this Hon'ble Tribunal with clean hands and have concealed the material facts intentionally. Even otherwise, the alleged cause of the Claimants fall under Section 2(k) of Industrial Disputes Act, 1947 instead of section 2-A of Industrial Disputes Act, 1947. The Claimant cause had not been

espoused by any Trade Union nor by any substantial number of workmen of Opposite Party hence even otherwise was liable to be rejected only on this ground alone.

6. That the claimants did not serve any demand upon the Opposite Party prior raising the dispute before appropriate Government/Opposite Party, hence the present claim is liable to be dismissed qua to the said claimants on this ground alone.

#### **PRELIMINARY OBJECTIONS:—**

1. That the statement of claim has not been filed within prescribed time as fixed in the order of reference issued by the Government of India, further no request for condonation of delay has been sought for or condoned suo-moto by the Hon'ble Tribunal as such the statement of claim is liable to be rejected.

2. That the statement of claim in the captioned matter is not properly verified or supported by any affidavit of the Claimant. Keeping in view of the circumstances, the present statement of claim of the Claimants is liable to be rejected in the interest of justice.

3. That no employer and employee, master and servant relationship ever existed between the claimants and Airports Authority of India during the alleged period of employment. As such, there is no industrial dispute exist between the parties.

4. That the Hon'ble Tribunal has no jurisdiction to entertain the matter which falls under contract labour (Regulation and Abolition) Act, 1971, Only the authority constituted under the CLRA is only the competent authority to adjudicate the present matter, as such the present claim statement may be returned with advice to approach the appropriate forum for redressal of their grievances or reject the claim statement in the interest of justice.

5. That the claimants have not served any demand in writing prior filing the statement of claim before the appropriate government upon the management and no trade union registered under the Trade Union Act or substantial number of the workman supported the cause of the present claimants, so the present dispute does not fall under Section 2(k) of the Industrial disputes Act, 1947.

6. That the Airport Authority of India is a government statutory body and duly notified by the Government of India, it does not fall within the definition of Industry as defined in Industrial Disputes Act 1947 under Section 2(j), as such, the provisions of Industrial Disputes Act 1947 does not apply in the present matter,

keeping in view the above facts and circumstances the claim statement of the claimants are liable to be rejected.

However, the parawise reply to the statement of claim is given hereunder which is without prejudice to the preliminary objections stated above and which is without prejudice to each other.

#### **Reply on Merits**

1. Reply in para No. 1 of the statement of claim (hereinafter referred to as SC for brevity) it is submitted that the Claimants are not entitled any back wages or re-engagement or reinstatement in the employment of Airports Authority of India as they never worked on the roll of AAI and no claim of reinstatement or back wages or any other relief against AAI arises.

2. The contents of para 2 of SC are matter of record, however the reference order is made mechanically without application of mind as such the present reference order is liable to be quashed.

3. In reply to para No. 3 the claimants were never engaged as security guard with effect from 15.01.1994 or any other date. In fact the security services at Cargo Complex, Indira Gandhi International Airports, Delhi were provided by the different Agencies which were sponsored by the Directorate General of Resettlement, Ministry of Defence, Govt. of India under a resettlement scheme measure for ex-servicemen. The Ld. Single Judge, Hon'ble High Court of Delhi in CWP No. 4292/97 and 4211/97 in one of the observation held that the very purpose will be defeated for which the Directorate General of Resettlement, Ministry of Defence was formed and rehabilitation scheme framed by Government in case the plea of the claimants is accepted. Moreover, the management of Airports Authority have not recruited or appointed or engaged or reengaged any security guard. Airports Authority has not been asked for the eligibility criteria or fitness for the job by any of the Security Agency, before the appointment or recruitment of security guards.

4. In reply para No. 4 of Statement of Claim, the claimants were never engaged by AAI for discharging the duties of securing the cargo complex and no claimant was appointed against the vacant sanctioned posts. It is absolutely incorrect to say that management of Airport Authority of India recruited or appointed claimants after the artificial introduction of the contractor. In fact, the AAI provided the work of security to the Agencies which were sponsored by the Directorate General of Resettlement, Ministry of Defence was formed and rehabilitation scheme framed by the Govt. of India.

5. That the contents of the para 5 of Claim Statement are not relevant in view of the fact that the job performed

by the claimants was not the job of watching the buildings. In fact, the said issue has been duly adjudicated in Civil Writ Petition Nos. 4292/97 and 4211/97 in favour of the Airports Authority of India. Moreover, the Government notification dated 09.12.1976 issued under CLRA 1970 has already been quashed by the Hon'ble Supreme Court of India in the Judgment of Steel Authority of India Vs. National Waterfront workers Union & Ors. (2001)7 SCC 1 wherein reversing its earlier judgment in the matter of Air India Statutory Corporation Vs. United Labour Union. Moreover, the claimants were not covered by the Government notification dated 09/12/1976 and the judgment passed by the Humble Supreme Court of India in the matter of Air India Statutory Corporation being the Employees of the U.P. State Government Undertaking/ Statutory Body, it is submitted that an employee of the State Government Undertaking cannot claim and are not entitled to for regularization in another public sector undertaking. The Petitioners were the employees of M/s UPBSKB a U.P. State Government Undertaking, the said agency was sponsored by the Director General of Resettlement, Ministry of Defence, Government of India under the Resettlement Scheme. It is respectfully submitted that the dispute of the Claimants is totally different from the persons engaged in Chennai and Kolkata.

6. That the contents of the para 6 of Claim Statement are irrelevant. It is respectfully submitted that the disputes of the Claimants is totally different from the persons engaged in Chennai and Kolkata. It is submitted that the claimants already have availed the opportunities before the Hon'ble High Court and Supreme Court, but they did not succeed, as such they have no right to claim as afresh the same dispute before this Hon'ble Industrial Tribunal.

7-8. That there are no paras numbered as 7&8 in the copy of Statement of Claim served upon the Respondent.

9. That the contents of the para 9 of Claim Statement are wrong and denied. The claimant did not serve any demand and legal notice dated 03.04.2003 upon the Management of Airports Authority of India before filing the present Statement of Claim before the Hon'ble Court or Conciliation Officer, so the question of reply to the said notice does not arise.

10. That the contents of the para 10 of Claim Statement are incorrect, wrong and vague, hence denied. The Claimants neither worked on the roll of the AAI nor supervised by any official of the AAI as such the question of satisfaction of the job during the course of employment or cause of complaints from any corner does not arise at all. It is submitted that the Claimants were working under



the agency sponsored by the Ministry of Defence under resettlement scheme.

11. That the contents of the para 11 of Claim Statement are absolutely, incorrect, wrong, hence denied. It is absolutely wrong that the Claimants were directly supervised and controlled by its designated officers, no regular employees of AAI directed or deployed any employee of the agency/contractor.

12. That the contents of the para 12 of the Claim Statement are misconceived and irrelevant, hence denied. It is incorrect that the nature of contract between AAI and the Contractor was only for the supply of labour and it is further denied that the duty hours of the employees of the agency were specified by the management of AAI.

13. That the contents of the para 13 & 14 of Claim Statement are very vague, wrong hence denied. It is submitted that appropriate government neither prohibited the job of security and safety at AAI, IGI Cargo, Delhi nor declared the job of Security and Safety as perennial in nature under section 10 of the CLRA in the establishment. The Labour Court or Industrial Adjudication has no jurisdiction to prohibit the job of security and safety at Cargo or declare as perennial nature of job in the establishment under section 10 of the CLRA for the purpose of engagement of the contract workers. Rest of the contents and allegations as alleged in the para is denied.

14. That the contents of para 15 & 16 of Claim Statement are incorrect, wrong and false hence denied. The management of Airport Authority of India has no ill will against these claimants or any other employee engaged by any security agency, in case, any fresh contractor or security agency is awarded after expiring the period of previous contract, would not amount illegal termination of service of the claimants as there is no nexus of employment of claimants between the AAI and the Security Agency. It is submitted that agreement for providing security services at the premises of the AAI are awarded to agencies sponsored by the Directorate General of Re-settlement, Ministry of Defence, Govt. of India. The contention of the claimants that they were discharged with effect from 11.03.2002 is devoid of substance and contrary to the factual and legal position. It is submitted that the AAI has entered into a service contract and the claimants admittedly, were the employees of the said contractor which is an independent body established for very purpose of the benefit of the claimants. It is further submitted that claimants never worked on the roll of the AAI. It is absolutely incorrect that the claimants had been working continuously since 15.01.1994.

15. That the contents of para 17 of Claim Statement are absolutely incorrect and wrong hence denied. It is submitted that AAI never committed any unfair labour practice or indulging in practice with intent to deprive the worker from the permanent status.

16. That the contents of para 18 & 19 of Claim Statement are incorrect, wrong and misconceived, hence denied. It is absolutely wrong to say that the AAI had introduced the new contractor w.e.f. 11.03.2000 with intent to frustrate the claim of the claimant. It is further incorrect to say that introduction of new contract amounts to mala fide termination of the services of the claimants. In case, the fresh contractor due to any reasons whatsoever, the AAI has no right to intervene in administrative affairs of the two contractors. In case, the claimants were aggrieved with any administrative decisions of the contractor, they were supposed to approach the new contractor and demand for reinstatement, but they did not do so probably they were not in the employment of erstwhile contractors. It is admitted case that the claimants were the employees of the contractors and were deployed at the premises of the AAI for providing security services under contract, the claimants have no right to demand for regularizing on reinstatement in service etc. with the AAI.

17. That the contents of para 20 of the claim statement are matter of record. It is duty of the claimants to prove the same as onus of proof on them.

18. In reply to para no. 21, the claimants were never worked on the roll of the AAI and there were no employer and employee relationship between the claimants and AAI, as such question of payment of retrenchment compensation, notice wages etc. to the claimants does not arise at all.

19. That the claimants again mentioned para 20 after para 21. The claimants are intentionally concealing their gainfully employment record after the alleged date of termination from services due to ill motive. However, the onus of proof of unemployment is on the claimants, it is the duty of the claimants to prove the same before the Hon'ble Industrial Tribunal.

20. In reply to para again 21, the claimants have not produced any material on which it can be relied upon that the cause of the claimants has been supported or espoused by any trade union registered under the Trade Union Act or any substantial number of employee of the establishment. The claimants have not produced any substantial material on which it can be relied upon that the claimants are member of any trade union, as such it is apprehended that the claimants are not member of trade

union and no union has espoused the cause of the claimants.

On the basis of aforesaid contents management prayed that statement of claim be dismissed & also prayed to reject the prayer of Claimants.

**Workmen/claimants in reply to aforesaid written statement filed rejoinder wherein they stated as follows:—**

**Reply to Preliminary Submissions:**

1. That the contents of para 1 of the preliminary submissions raised by the management are denied specifically as false and frivolous. Contents of the statement of claim are reiterated herein in toto.

2. That the contents of para 2 of the preliminary submissions raised by the management are denied specifically as false and frivolous except what is matter of record. Contents of the statement of claim are reiterated herein in toto. It is further submitted that the judgment of the Hon'ble Supreme Court referred to is infact supporting the case of the workmen herein. It is denied that the present ID is an abuse of process of law.

3. That the contents of para 3 of the preliminary submissions raised by the management are denied specifically as false and frivolous except what is matter of record. Contents of the statement of claim are reiterated herein in toto.

4. That the contents of para 4 of the preliminary submissions raised by the management are denied specifically as false and frivolous. Contents of the statement of claim are reiterated herein in toto the judgment of the Hon'ble High Court is to be read in its context.

5. That the contents of para 5 of the preliminary submissions raised by the management are denied specifically as false and frivolous. Contents of the statement of claim are reiterated herein in toto.

6. That the contents of para 6 of the preliminary submissions raised by the management are denied specifically as false and frivolous. Contents of the statement of claim are reiterated herein in toto.

**Reply to Preliminary Objections:**

1. That the contents of para 1 of the preliminary objections raised by the management are denied specifically as false and frivolous. Contents of the statement of claim are reiterated herein in toto. The contention of the management is of no relevance in the adjudications of the instant dispute as the claim was filed within the time granted by this Hon'ble Tribunal in the exercise of its discretion.

2. That the contents of para 2 of the preliminary objections raised by the management are denied specifically as false and frivolous. It is submitted that the statement of claim is properly verified.

3. That the contents of para 3 of the preliminary objections raised by the management are denied specifically as false and frivolous. Contents of the statement of claim are reiterated herein in toto.

4. That the contents of para 4 of the preliminary objections raised by the management are denied specifically as false and frivolous. This Hon'ble tribunal is well within its jurisdiction to decide the instant dispute on merits as held by the Hon'ble Supreme Court in the Steel Authority Case 2001(7) SSC1.

5. That the contents of para 5 of the preliminary objection raised by the management are denied specifically as false and frivolous. A proper demand notice was served prior to the raising of the instant industrial dispute without prejudice to the fact that no written demand notice is infact required in a case such as the instant dispute.

6. That the contents of para 6 of the preliminary objections raised by the management are denied specifically as false and frivolous. That the answering respondent is an 'Industry' is no longer res integra.

**REJOINDER ON MERITS:**

1. That the content of para 1 of the reply on merits are denied specifically as false and frivolous and the contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed.

2. That the contents of para 2 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of statement of claim are hereby reiterated and reaffirmed.

3. That the contents of para 3 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed.

4. That the contents of para 4 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed.

5. That the contents of para 5 of the reply on merits by the management are denied specifically as false and frivolous except what is matter of record. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed. The judgments are to be read in their true context.

6. That the contents of para 6 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed.

7. That the contents of para 7 and 8 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed.

9. That the contents of para 9 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed. Reply in preceding paras may be read as reply herein also and the same are not being repeated for the sake of brevity.

10. That the contents of para 10 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed.

11. That the contents of para 11 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed.

13. That the contents of para 13 and 14 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed. Reply in preceding paras may be read as reply herein also and the same are not being repeated for the sake of brevity.

14. That the contents of para 15 and 16 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed. Reply in preceding paras may be read as reply herein also and the same are not being repeated for the sake of brevity.

15. That the contents of para 17 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed.

16. That the contents of para 18 and 19 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed.

17. That the contents of para 20 of the statement of claim need no rejoinder.

18. That the contents of para 21 of the reply on merits by the management are denied specifically as false

and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed.

19. That the contents of para 13 and 14 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed. Reply in preceding paras may be read as reply herein also and the same are not being repeated for the sake of brevity.

20. That the contents of para 20 of the reply on merits by the management are denied specifically as false and frivolous. Contents of corresponding para of the statement of claim are hereby reiterated and reaffirmed.

On the basis of contents mentioned in aforesaid Workmen/Claimants prayed that this Hon'ble Tribunal be pleased to pass an award in favour of the workmen herein.

My Ld. predecessors has not framed any issue but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination were as follows:—

"Whether the Industrial dispute raised by Sh. K.N. Pandey and 84 others (List attached) against the management of Airport Authority of India over re-engagement in service with fullback wages and regularization of their services is justified and fair? If so, what relief they are entitled to?"

**In support of their case workmen filed affidavit of following witnesses:—**

1. WW1 Shri Anand Singh Bisht.
2. WW2 Shri G.P. Yadav
3. WW3 Shri Satvinder Singh
4. WW4 Shri Durlab Singh
5. WW5 Shri Jabar Singh
6. WW6 Shri Ram Lubhaya
7. WW7 Shri Rajender Singh Dalal
8. WW8 Shri Amar Singh Rana
9. WW9 Shri N.B. Pathak
10. WW10 Shri Ram Phool
11. WW12 Shri Rewati Raman Mishra
12. WW13 Shri Suresh Kumar Swami
13. WW14 Shri T.K. Das
14. WW16 Shri Virender Kumar
15. WW18 Shri Mohd. I. Ansari
16. WW19 Shri Tara Chand

17. WW20 Shri Mahavir Prasad
18. WW21 Shri Om Prakash
19. WW22 Shri Rajbir Singh
20. WW23 Shri Balbir
21. WW24 Shri Mohinder Singh
22. WW25 Shri Pareshwar Prasad Kuriyal
23. WW26 Shri Manbir Singh
24. WW27 Shri Krishan Singh
25. WW28 Shri Kedar Singh Rawat
26. WW29 Shri Desh Raj
27. WW30 Shri Surender Prasad
28. WW31 Shri Dhirender Singh
29. WW32 Shri Vijay Kumar
30. WW33 Shri Jagdish Chander
31. WW33 Shri Kamlesh Pandey
32. WW34 Shri Tek Chand
33. WW35 Shri M.M. Pandey
34. WW36 Shri Ram Kumar

**They were cross-examined at Length by Shri V.P. Gaur A/R for the management.**

**Cross-examination are as follows:—**

It is correct that the management AAI never issued any appointment letter to me and other workmen of this case. Likewise, no termination letter was given by the management to me and other workmen. No identity card has been issued to me and other workmen by AAI. No. ESI benefits or PF benefit used to be given to me and other workmen by AAI. I do not know who was providing security guards to the management. It is incorrect that myself and other workmen did not use to sign the attendance register in the management. It is correct that we used to receive salary in the bank which the contractor used to deposit. It is incorrect to suggest that no notice was given by me and other workmen to AAI before coming to the court. It is correct that I have not placed the copy of the resolution dated 27.05.2003 but it is not correct to say that the said resolution was not passed. It is incorrect to suggest that there is no relationship of employer and employee between the parties or that we have filed a wrong and false case against the management.

**In support of its case management filed affidavit of MW1 Captain Sudhir Malik. Wherein he stated as follows:—**

1. I say that the deponent is working as Dy. General Manager (Security), with the Airports Authority of India,

Terminal-I, New Delhi, and as such is well conversant with the facts of the case and fully competent and authorize to depose the present Affidavit.

2. I say that the Claimants initially filed two Writ Petitions Nos. 4211/97 & 4292/97 titled Deo Sunder Jah Vs. UOI & Ors and B.I. Mandal & Ors. Vs. UOI & Ors. which were dismissed by the Hon'ble High Court of Delhi after examining all the aspects/factors related to the case and subsequently LPAs Nos. 136/2000 & 203/97 filed against the above referred judgments were also been dismissed on merit by the Division Bench of High Court of Delhi. Another petition No. 1705/2000 was filed by the Claimants titled K.N. Pandey & Ors. Vs. UOI & Ors., and same was also dismissed by the Hon'ble High Court of Delhi, thereafter claimants preferred SLP No. 196/2002 titled B.I. Mandal & Ors. Vs UOI & Ors. which was dismissed by the Division Bench of the Hon'ble Supreme Court of India in view of Supreme Court Judgment in Steel Authority of India case. The Claimants again approached the Hon'ble Court of Delhi under CWP No. 772/2002 titled A.S. Bisht & Anr. Vs. UOI & Ors. which was also dismissed as withdrawn. All the above Writs, Appeals and SLP were dismissed after consideration of all the aspects by the Hon'ble Courts, therefore the petition deserves dismissal on the above grounds. Further, the security personnel are engaged by the agency (ies) sponsored by the Directorate General of Resettlement, Ministry of Defence, Govt. of India under a resettlement scheme/measure for ex-servicemen. This Hon'ble Court in CWP No. 4292/97 & 4211/97 has filed that the very purpose will be defeated for which the Directorate General of Resettlement, Ministry of Defence was formed & rehabilitation scheme framed by the Govt. in case the plea of the claimants is accepted.

3. I say that the contract of security work, awarded to M/s R-4 security Services for two years from March, 2002 to 14.11.2004, thereafter, another security agency namely M/s. Ex-servicemen Airlink Transport Services was awarded contract of Security services from 14.11.2004 after being sponsored by the Directorate General of Resettlement, Ministry of Defence, Govt. of India.

4. I say that the Claimants are not entitled to any relief being the employees of the U.P Bhutpurva Sainik Kalyan Nigam Ltd., a State Govt., undertaking sponsored by the Directorate General of Resettlement, Ministry of Defence. Govt. of India. In this regard, the holding of this Hon'ble Court is relevant wherein this Hon'ble Court has held that the very purpose of the Resettlement Schemes of Ex-Servicemen would be defeated, if their contention is acceded to.



5. I say that no legal demand notice has been received from the claimants hence it is assumed that no demand has been served upon before raising the present dispute.

6. I say that Management of Airport Authority of India did not issue any appointment letter to any claimants and no salary has been paid as there was no employer and employee relationship was existed with the claimants.

7. I say that as per available record for the relevant years to claimant was engaged as Security Guard with effective from 15.1.1994 or any other date. In fact the contractor provides security services to the Cargo Complex, Indra Gandhi International Airport, Delhi.

8. I say that Airport Authority of India used to take security services through different agencies which were sponsored by the Directorate General of Resettlement, Ministry of Defence, Govt. of India under a resettlement scheme measure for ex-servicemen.

9. I say that the management of Airport Authority neither recruited or appointed any claimant as security guard for Airport Authority of India nor suggested or recommended any claimant to be appointed for Airport Authority of India.

10. I say that claimants were not engaged by AAI for discharging the duties of securing the cargo complex and no claimant was appointed against the vacant sanctioned posts.

11. I say that Management of Airport Authority of India did not introduce any claimant to the contractor, in fact the AAI was provided security services by the Security Agencies/Contractors which were sponsored by the Directorate General of Resettlement, Ministry of Defence was formed and rehabilitation scheme framed by the Govt. of India.

12. I say that the management of AAI did not depute or assign any work to any employee of the security agency and also did not interfere in internal function of security agencies/contractors as such there was no nexus of employment of contract labours between AAI and Security Contractor.

13. I say Airports Authority of India, IGI Airport (hereinafter referred to as the "Authority") executed an agreement on 4.4.2006 with M/s Delhi International Airport Pvt. Ltd. for operation, management and development of IGI Airport. By virtue of the said Agreement, the management of the IGI Airport, Delhi was transferred w.e.f. 3.5.2006 by issuing a letter dated 2.5.2006 by the Authority as defined in the said Agreement.

14. I say in view of the above, the present claim statement of the Claimants may be rejected for the reason mentioned above against the Authority. It is prayed that no order may be passed against the Authority for the aforesaid reasons.

**His affidavit was tendered on 7/5/2013. He was partly cross-examined on 7/5/2013.**

**His cross-examination is as follows:—**

It is correct that SLP was dismissed was withdrawn by the Apex Court. Contract of Security work was awarded for two years to M/s R-4 Security Services. I can produce the said contract agreement on the next date. Further cross-examination of the witness is deferred with direction to bring the contract agreements on the next date.

**He was partly cross-examined on 24.06.2006.**

**His cross-examination is as follows:—**

I produce copy of contract agreements, which are Ex. MW1/W1 to Ex. MW1/W3. Sponsorship letter issued by Director General of Resettlement, Ministry of Defence, Government of India, New Delhi in favour of ex-servicemen Air Link Transport Service and UP Bhutpoorv Sainik Kalayan Nigam Ltd. would be produced on the next date, if so directed. I was promoted as Deputy General Manager (Security) in September, 2010, Vol. prior to that I was working as Assistant General Manager (Security). The contractor used to pay salary to its employees by way of transfer to their respective bank accounts. We availed services of the security guards through the contractors referred above. Security guards used to provide protection services to the cargo. Initially we availed services of 392 security guards. Contractors used to appoint security guards. Facts of this controversy are within my knowledge since 1994, the date when I joined services with the management. On 14.3.2002, contract of UP Bhutpoorv Sainik Kalyan Nigam was terminated by the management. On that very day, contract was awarded to M/s. R-4 Security Services. Writ Petition No. 1705/2000 was filed before High Court of Delhi wherein management was a party. It is correct that on 14.3.2002, a notice was issued by the High Court to the management in the aforesaid writ petition. Vol. the said writ petition was dismissed by the High Court and SLP was also dismissed as withdrawn by the Apex Court. I have filed copy of the orders passed by High Court as well as the Apex Court, which have been proved as Ex. MW1/1 to Ex. MW 1/3. Those order are self-explanatory.

It is incorrect that facts stated in para 12 of my affidavit are wrong. I would file the copy of OMDA before the Tribunal on the next date. Further cross-examination of the witness is deferred with directions to bring the above documents on the next date.

**He was further cross-examined by Shri M.L. Chawla on 12.8.2013.**

**His cross-examination is as follows :—**

The management of IGI Airport has been transferred to a Joint Venture company known as Daily International Airport Limited. Airport Authority has no control after 2.5.2006. It is incorrect to suggest that News Published in the Hindustan dated 8th July, 2005 copy of paper shown to witness, and he replied aforesaid Published News in Newspaper is wrong.

#### **Observation**

Learned Counsel for workmen not cross-examined. He wants to argue at this stage which is not possible. Put up on next date Learned Counsel is Liberty to show Law that he can argue during cross-examination. Put on next date.

#### **Written Submissions on Behalf of the 33 workmen**

1. That the above said Industrial Dispute raised the issue for re-engagement with the management directly or otherwise with full back wages and regularization in service with other consequential benefits.

2. That the reference order dated 10.10.2006 passed by the appropriate authority on the following terms:—

"Whether the Industrial dispute raised by Sh. K.N. Pandey and 84 others (List attached against the management of Airport Authority of India over re-engagement in service with full back wages and regularization of their services is justified and fair? If so, what relief they are entitled to?"

The entire dispute revolved and related to the grievance of the workmen so terminated illegally on 14.03.2002 for which each and every member of workmen have had to attend court on several occasions but the procedure and the practice followed in such like cases came in the way of getting timely justice coupled the delaying tactics adopted by the Mgt., hence the workmen has been suffering continuously without any source of livelihood, thus a case of denial of right to life as guaranteed under Article 21 of the Constitution of India. The workmen were subjected to wanton harassment ever since the case was put on cross-examination from 2008, which took away the time of 5 precious years.

3. That the workmen who were entrusted and were discharging the duties of securing the Cargo Complex who were appointed against vacancies sanctioned for the purpose and are still available with the Mgt.

That during the period under reference some of the workmen were regularized at **Chennai and Kolkata and**

**they are continuing in services under the same contractor who is one of the respondent i.e. UPSKN Ltd.** Therefore a case of clear cut hostile discrimination and total arbitrariness with full throated mala fide.

It may not be out of place to mention that the entire cross-examination of the whole lot of workmen was conducted out of context to which objections were raised the then Presiding Officer did not care to record the objections raised by the workmen.

As per Ex. MW1/W1, the contractor who assumed the charge of the contract in 15.01.1994 and was extended time to time till 11.03.2002 when the office note circulated. The workmen took no time in moving the Hon'ble High Court on 14.03.2002 pursuant to which notices were issued by the High Court. It is a petty that the respondent/management instead of adhering to the notice schedule of the Court terminated the services of the workmen on the same day and date, as such the management was quite obviously hell bent to subject the workmen to miseries, harassment, humiliation and loss in status, rank and position as such then the workmen are trying their best to secure justice from this Hon'ble Tribunal.

Simultaneously it may be observed that the Management with a clever motive resort to actually and factually implementation of contractor with the R-4 Security Services Pvt. Ltd. Whose name as per press clipping of 08.07.2005 (on record) are neck deep involved in a fraud of more than 2 crores involving the name of Capt. Sudhir Malik and R.K. Malik. In this respect press clipping is once again enclosed and marked as SNY-1. This obviously reveals a crystal clear picture that the whole contract was sham and not a real one introduced between the management and their employees.

- (i) In the view of the above said submissions regarding synopsis the workmen are basing their claim and reliance on CWP 15721-56 of 2004.
- (ii) Complete text of judgement of Constitution Bench in the matter of Steel Authority of India V/s National Union Water Front Workers & Ors. etc. A copy each of the foregoing judgement have already been placed on the court file for perusal of the court with regard to various definitions and the issues and the settled by the Apex Court (CLRA).

That the entire case file of the Hon'ble Court after perusal of which would be observed that no more details are necessary for further elucidation in support of the case of claim of the workmen.

In view of the above the workmen pray for justice even though a far too belated yet it will give the workmen a sigh of relief if they are blessed with justice.

**WRITTEN SUBMISSIONS ON BEHALF OF AIRPORT AUTHORITY OF INDIA**

1. That the captioned matter is pending for adjudication before this Hon'ble Court and the same is listed on 02/12/2013 for further argument.

2. That Government of India, Ministry of Labour & Employment referred the following dispute *vide* order No. L-11012/8/2004-IR(M) dated 27.07.2006 for adjudication before the Hon'ble Industrial Tribunal:—

"Whether the industrial dispute raised by Sh. K.N. Pandey and Anand Singh Bisht against the management of Airport Authority of India over re-engagement in service with full back wages and regularization of their services justified and fair? If so, what relief they are entitled to?

After above reference, Government of India issued a Corrigendum on 10.10.2006 *vide* Order No.-L-11012/8/2004-IR(M) with the following terms of reference:—

"Whether the industrial dispute raised by Sh. K.N. Pandey and Anand Singh Bisht against the management of Airport Authority of India over re-engagement in service with full back wages and regularization of their services justified and fair? If so, what relief they are entitled to?"

3. It is pertinent to mention here that Govt. of India had sent only order of corrigendum without list of claimants, the said fact was informed to the Hon'ble Industrial Tribunal. After coming to know this defect, the Hon'ble Presiding Officer wrote a letter to the government informing the defect of corrigendum, then Under Secretary of Govt. of India, Ministry of Labour and Employment *vide* letter dated 22.8.2012 sent a list of claimants with intend to cure the said defect.

4. In the present matter only 35 claimants have filed the statement of claim out of 85 claimants on 6.12.2006, hence rest of the claimants have no claim before the Hon'ble Tribunal. It is pertinent to mentioned here that out of 35 claimants Mr. K.N. Pandey has been substituted *vide* order dated 16.12.2010 and amended memo of parties has been placed on 6.1.2011.

5. Further, the Claimant had impleaded following parties as Opposite parties in their statement of claim:—

1. Chairman-cum-Managing Director  
Airport Authority of India,  
Rajiv Gandhi Bhawan,  
New Delhi.
2. General Manager (Cargo)  
International Airport Division,  
IGI Airport Cargo Complex,  
New Delhi-110037

3. M/s. Delhi International Airport Limited  
IGI Airport, New Delhi-110037

4. M/s. UP Purva Sainik Kalyan Nigam Limited,  
Through its Regional Project Manager,  
B-62, Jal Vaya Vihar, Sector-30,  
Gurgoan-122001.

6. That Airport Authority of India appeared before the Hon'ble Tribunal and categorically denied the contentions of the claimants in the Written Statement.

7. The claimant also filed an application on 6.12.2006 praying for issuing summon to Delhi International Airport Limited *i.e.* Opposite Party No. 3. the Hon'ble Tribunal was pleased to serve a show cause notice upon Opposite Party No. 3 but during the proceeding on 6.1.2011, the Authorized Representative of claimants prayed to withdraw the said application, on the request of claimants of Hon'ble Presiding Officer dismissed the application as withdrawn. But the claimants has not taken any step to serve any notice or summon upon UP Purva Sainik Kalyan Nigam Limited *i.e.* Opposite Party No. 4 and no adverse proceeding has been passed so far against opposite party No. 4.

8. It is submitted that claimants have not taken any step to summon any record from Opposite Party No. 4 Contractor with intend to concealment of material fact and terms of employment. As such, adverse inferences must be drawn against the claimants.

9. In the present matter, only 35 claimants out of 85 claimants had filed their claims and evidence by way of affidavit without any document or any other cogent evidence in support of their claim.

10. In such circumstance, it is settled law laid down by the Hon'ble Supreme Court of India in the matter of Range Forest Officer Vs. S.T. Hadimani 2002(3) SCC 25 that burden of proof lies on claimants that he was in employment and bare filing evidence by way of affidavit is not sufficient evidence. The relevant portion of judgement is reproduced hereunder:—

".....3..... In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or Tribunal to come to the conclusion that a

workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside".

11. In another similar circumstances the Hon'ble SC in the matter of *Bank of Baroda Vs. Ghemarbhai Harjibhahai Rabari* 2005 (10) SCC 792, the Hon'ble Supreme Court held that onus of proof that a claimant was in employment of management primarily lies on person who claims to be a workman. The relevant portion is reproduced hereunder:—

12. ".....6..... Before the Division Bench of the High Court the Bank had relied on a judgment of this Court in the case of *Range Forest Officer Vs. S.T. Hadimani* which judgement was distinguished by the High Court in the impugned order by holding that unlike in that case, in the present case the employee had by cogent evidence establishment that he had worked as a driver of the car of the Bank for the period from July 1994 to October 1995.".....

13. ....8..... there is no doubt in la that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman, he degree of such proof so required, would vary from case to case. In the instant case the workman has established the fact which, of course, has not been denied by the Bank, that he did work as a Driver of the car belonging to the Bank, during the relevant period which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the Bank.

14. As such, in above referred matter of *Bank of Baroda*, claimant had produced receipts for the period from July 1994 to October 1995 which were issued against salary, apart from his own statement as evidence, further the said amount was debited from the account of Bank but in this matter, claimants have not produced any document in support of his length of service except bare statement of affidavit as evidence. In such, circumstances the Judgement of *Range Forest Officer* applies in this matter instead of *Bank of Baroda* citation.

15. Similar view has been taken by the Hon'ble Supreme Court of India in the matter of *Reserve Bank of India Vs. S. Mani* 2005(5) 100 and followed view of *Range Forest Officer* case relevant portion is reproduced hereunder:—

....."Filing of an affidavit is only his own statement in his favour be registered as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, worked for 240 days in a year. (Para Nos. 30 and 31).

....The purported circumstantial evidence relied on by the Tribunal to hold that the workmen had completed 240 days of work is wholly irrelevant for the purpose of considering as to whether the respondents have completed 240 days of services or not; a party to the its may or may not succeed in its defence. (Paras 34, 35 and 36)...."

16. In the matter of *R.M. Yellati Vs. Asst. Executive Engineer* 2006 (1) SCC 106, SC observed (Para 18a) that this is not a case where allegation of the workman are founded merely on an affidavit. He had produced cogent evidence in support of his case. The workman was working in SD-1, Athani and Ext. W-1 was issued by the former Assistant Executive Engineer, Hipparagi Dam Construction Division No. 1, Athani 591 304. In that case defence of the management was that although Ext. W-1 refers to the period 22.11.1988 to 20.06.1994, the workman had not worked as a daily-wager on all days during that period. If so, the management was duty bound to produce before the labour court the nominal muster rolls for the relevant period, particularly when it was summoned to do so. We are not placing this Judgment on the shifting of the burden. We are not placing this case on drawing of adverse inference. In the present case we are of the view that he had worked for 240 days in a given year was supported by the certificate (Ex. W-1). In the Circumstances, the Division Bench of the High Court had erred in interfering with the concurrent findings of fact."

It is clear that in *R.M. Yellatti* case, claimant had produced cogent evidence of Ext. W-1 (Certificate of employment issued by Executive Engineer) with the affidavit of statement but in the present case claimants have not produced any single piece of paper except bare statement of their affidavit. Therefore *Range Forest Officer* case applies in this matter instead of *R.M. Yellatti* case.

17. Although at the time of argument following seven claimants produced photocopies of their pass book:—

Sl. No.	Name of Claimant	Bank A/c No.
1.	Mohd. Israil Ansar	10376691201
2.	Durlab Singh	10376691586
3.	Genda Pd. Yadav	01190008019
4.	Suresh Kumar	01190008149
5.	Amar Singh Rana	01190008670
6.	Virender Kumar	00190008304
7.	Desh Raj Sharma	Illegible

18. It is pertinent to mention here that no amount has been debited from the account of AAI to the account of any claimant.



19. Moreover, salary column in passbooks refers "RERDPN", REFKCM" "RFRRBA"RFRHSS" as such it seems that no amount even has been paid even by Contractor UP BSKNL through Bank.

20. Further, the claimants have not produced the original pass book before the Hon'ble Tribunal nor produced any evidence to prove the passbook and no entry has been proved from the bank.

21. The Airport Authority of India has categorically denied the claim of the claimants in the Written Statement and also placed agreement entered between the Contractors during the evidence of the Management and same are Ex. MW1/W1, MW1/W2 and MW1/M3. However, the management produced certain other documents such printed copy of OMDA, letter dated 2.03.1990, 11.11.1994, 23.02.2004 and 27.12.2001 and prayed for allowing the management to prove the same by producing the evidence but the Hon'ble Tribunal declined the same on 21.11.2013.

22. That Airport Authority of India has clearly establishment the genuine relationship with the Contractor by producing the written agreement with the Contractor, however, there is no specific allegation has been alleged by the claimants that how there is sham contract between AAI and Contractor. It is pertinent to mention here that no terms of the agreement has been violated by AAI and there is no direct master and servant relationship with the claimants.

23. The claimants have not produced any cogent evidence showing that they had worked ever with any contractor or AAI and also have failed to establish that there was sham contract between the principal and contractor employer.

In such, circumstances it is therefore prayed that claim of the claimants are not tenable in the eyes of law and liable to be rejected with exemplary cost.

In support of aforesaid contentions Ld. A/R for the workman cited following rulings:—

1. Hussainbhai Petitioner V. The Factory Tezhilall Union and other, pondents. AIR 1978 Supreme Court 14.

2. Steel Authority of India Ltd. and Ors. etc.

*Versus*

National Union Water Front Workers and Ors. etc.

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I have heard the Ld. A/Rs for the parties and perused the pleadings mentioned in Claim statement, Written Statement and rejoinder and evidence of parties as well as principles laid down in the cited rulings as well

as settled law on the relevant points including the relevant provisions of concerned law.

Perusal of reference dated 27.7.2006 shows that it was in reference of two workmen Shri K.N. Pandey and Sh. Anand Singh and its corrigendum dated 10.10.2006 shows that it is in respect of workman Shri. K. N. Pandey and 84 other workman were sent to this Tribunal for adjudication.

When reference received in this Tribunal on 31.7.2006. It was registered as ID. No. 59/2006. Thereafter all workmen/claimants were called upon through notices to file their claim statement within fifteen days alongwith list of witnesses and relevant documents.

In response of which only following 34 workmen filed their Claim Statement on 6.12.2006:—

1. Shri K.N. Pandey
2. Shri Anand Singh Bisht
3. Shri Ram Lubhaya
4. Shri Rajender Singh
5. Shri Amar Singh
6. Shri Satvinder Singh
7. Shri N.B Pathak
8. Shri Ram Phool
9. Shri Suresh Kumar Swami
10. Shri Ram Kumar
11. Shri Rewati Raman Mishra
12. Shri T.K. Das
13. Shri Tek Chand
14. Shri Virender Kumar
15. Shri Durlabh Singh
16. Shri M.M. Pandey
17. Shri Mohd. I. Ansari
18. Shri Tara Chand
19. Shri Mahavir Prasad
20. Shri Om Prakash
21. Shri Rajiv Singh
22. Shri Balbir Singh
23. Shri Mahendra Singh
24. Shri Parehwar Prasad
25. Shri Manvir Singh
26. Shri G.P. Yadav
27. Shri Krishna Singh

28. Shri Kedar Singh Rawat
29. Shri Desh Raj
30. Shri Surender Prasad
31. Shri Dhirender Singh
32. Shri Jagbir Singh
33. Shri Vijai Kumar
34. Shri Jagbir Chandra

First of all I am dealing with the case of workmen who have not filed statement of claim.

It is relevant to mention here that instant case is of civil nature. Wherein evidence is given on the basis of pleadings and case is decided on the basis of preponderance of evidence. Rest of them i.e. 51 workmen have not filed their claim statement because of non-filing of claim statement by them. There is no pleadings of them.

On the basis of which their case could be proceeded with. So their case is not being proceeded in want of their pleadings. Due to which they are entitled to no relief.

Now I am dealing with the case of 34 workmen who filed their statement of claim in this Tribunal.

Pending adjudication of reference workmen Shri K.N. Pandey died. Whose son Shri Kamlesh Pandey was substituted as his L.R. in his place in the instant I.D. on 16.12.2010.

Perusal of Credible and unrebulted evidence of workmen on record shows that all the aforesaid 33 workmen and Late workmen Shri K.N. Pandey were Security guards since 15.1.1994 and they continued as such upto 2002.

They were engaged through the contractor by Respondent No. 1. Their engagement was merely a comouflage. On account of continued engagement for long periods they may be regularised if they have been in service but admittedly either their service have already been terminated or retrenched. But they have not been paid notice pay and retrenchment compensation by their employer i.e. Respondent No. 1. As they were direct employees of Respondent No. 1 as per settled law. So they are entitled for benefit of S. 25-F I.D. Act because their termination is in Contravention of S. 25-F I.D. Act.

In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme Court on the point of reinstatement and grant of back wages. Which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev.

Corporation and Anr Vs. Gitam Singh, (2013) II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs. 50,000 (Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wages has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative Credit and Service Society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus, "grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Aforesaid 33 workmen mentioned at S. No. 2 to 34 and Late workman Sri K.N. Pandey were not appointed by following due procedure and as per rules. They had rendered service with the Respondent No. 1 as a Casual Worker. Thus compensation of Rs. 50,000 (Rs. Fifty thousand only) to each workman by way of damages by Management i.e. Respondent No. 1 after expiry of period of limitation of available remedy against award.

Shri Kamlesh Pandey L.R. of Late workman Shri K.N. Pandey shall be entitled to get share of amount of compensation of his Late father. That will meet the ends of justice.

Thus Reference is decided in favour of workmen and against Management.

Award is accordingly passed.

Dated : 26.12.2013

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 8 जनवरी, 2014

का०आ० 295.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअरपोर्ट अथॉरिटी ऑफ इंडिया, जबलपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 86/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/1/2014 को प्राप्त हुआ था।

[सं० एल-11012/6/2001-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 8th January, 2014

**S.O. 295.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2001) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India, Jabalpur and their workman, which was received by the Central Government on 6.1.2014.

[No. L-11012/6/2001-IR(M)]  
JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/86/2001

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Sunil Kumar Khare,  
Ex. Traffic Hand,  
House No. 500/1,  
Ram Nagar, Rampur,  
Jabalpur

...Workman

*Versus*

Aerodrome Officer,  
Airport Authority of India,  
National Airports Division,  
Civil Aerodrome, Jabalpur

...Management

#### AWARD

(Passed on this 2nd day of December 2013)

1. As per letter dated 14-5-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-11012/6/2001-IR(M). The dispute under reference relates to:

"Whether the action of the management of Airports Authority of India, National Airports Division, Office of the Aerodrome Officer, Dumna, Jabalpur in dismissing the services of Shri Sunil Kumar Khare, Ex.Traffic Hand *w.e.f.* 4-5-2000 in view of chargesheet dated 27-12-99 is legal and justified? If not, to what relief the concerned workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist Party workman filed his statement of claim at Page 2/1 to 2/6. Case of Ist Party workman is that he was working as Traffic Hand with Airport Authority of India, office of the Aerodrome Officer, Dumna, Jabalpur.

That his service record was excellent. That he was raising the illegalities committed by the department. That Smt. Manju Shree Sarkar was shown favour in the matter of leave. Workman was not granted leave on his application. That Shri A.K. Sharma and V.K. Tiwari clerks were granted overtime unduly. That they were attending office at 9.30 AM instead of 8.30 AM. They were leaving office by 5.30 PM but they were granted overtime for working till 7.30 to 8.30 PM. That Mr. Patel and A.K. Deshmukh were visiting home without availing leave. Workman was raising such issues of illegalities committed by those persons. That he had applied for 20 days EL in advance. His application was not granted. It is alleged that management was looking chance to take revenge on him. The chargesheet was issued to him on 27.12.99 (wrongly typed as 79). The charges against him were of passing sexually coloured remarks on Smt. Manju Shree Sarkar, negligence in duty and abusing Shri A.K. Sharma and V.K. Tiwari, Najeeb Khan and threatening to kill Shri M.K. Deshmukh. Workman has pleaded that enquiry was not conducted properly. He was not given opportunity to explain charges principles of natural justice were not followed by the Enquiry Officer the entire action of issuing chargesheet and conducting enquiry is illegal, arbitrary. He was not supplied documents. Chargesheet was highly belated. He was not supplied complaints of Manjushree Sarkar, Deshmukh. As enquiry held against workman is found vitiated, I am not inclined to narrate the pleadings exhaustively.

3. Ist party workman further submits that findings of Enquiry Officer are perverse. Charges against him are not proved from material on record. Enquiry Officer failed to give reasons for disbelieving evidence on defence. That there is no evidence to support findings of Enquiry Officer. Exercise of management is shod and fabricated. On such contentions workman prays for setting aside order of his termination and he be reinstated in service with consequential benefits.

4. IInd Party management filed Written Statement at Page 7/1 to 7/5. The claim of workman is totally denied. It is submitted that workman was appointed as Traffic Hand. It is denied that his service record was excellent. The allegation of workman about illegalities committed in the office or favour shown to the other employees are denied. That the charges against workman are supported by evidence. Allegations of workman that he was not supplied documents nor given opportunity of his defence are denied. It is denied that principles of natural justice were not followed by Enquiry Officer. That Enquiry Officer submitted his findings, the charges proved against workman. Showcause notice was issued to the workman. Considering gravity of the charges proved, workman was dismissed from service *vide* order dated 4-5-2000. The appeal was preferred by workman was dismissed. The

punishment was confirmed. It is submitted that the dismissal of workman is justified. Relief prayed by workman be rejected.

5. Management filed rejoinder at Page 11/1 to 11/3 submitting that the enquiry was properly conducted, principles of natural justice were followed.

6. *Vide* order dated 27-10-10, my predecessor found enquiry conducted against workman is not proper and legal. The management was given opportunity to prove misconduct in Court.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- |   |  |
|---|--|
| (i) Whether the misconduct alleged against workman is proper and legal?                           | Chargesheet is issued by incompetent authority, as such illegal. |
| (ii) Whether the punishment of dismissal imposed by management of IInd Party is legal and proper? | Punishment imposed by Incompetent Authority is illegal.          |
| (iii) To what relief the workman is entitled to?"   | As per final order.  |

### REASONS

8. After enquiry against workman is found vitiated, management of IInd Party was permitted to prove misconduct in Court. Management adduced evidence of 5 witnesses. Management's witness Shri M.K. Deshmukh in his evidence on affidavit has stated that he had submitted complaint on 22-11-99 against workman. That on 20-11-99 workman alleged that he was instigating Shri S.M. Patil, fire foreman against him. That on the day of incident, alongwith S.P. Patel were returning home. The workman came from behind he threatened. He abused using indecent language. Workman had threatened to kill him. In his cross-examination. Shri M.K. Deshmukh says he has submitted FIR of said incident to the police station Gomti Thana. If his evidence is carefully considered, it shows that incident occurred beyond Municipal Corporation Building while he and M.S. Patel were returning home. The place for said incident cannot be said part of the establishment of Airport at Dumna.

9. Other witness Kamlesh Kumar Sharma in his affidavit of evidence has stated that on 26-11-98, workman had come to submit leave application. The workman was told that application cannot be received directly. Application will be submitted to Aerodrome Officer. On that, workman had used indecent words. The words used by workman are not stated in the affidavit. In his cross-

examination, Kamlesh Sharma says that he had no authority to grant leave but he was receiving leave applications. He was placing those applications before Aerodrome Officer. He had not submitted complaint in writing to Aerodrome Officer. FIR was not lodged.

10. Najeeb Khan Management witness has stated that on 26-11-98, while he was returning from duty and arrived near Municipal Corporation to park the jeep, staff bus has reached there. At that time, workman said that he may carry his wife to the Aerodrome Officer. He also threatened to kill him. That workman had beaten him and abused indecent language. In his cross-examination Najib Khan admits that he has no enmity with workman. They were working together. Workman beaten him at Municipal Corporation premises. There is absolutely no argument when incident occurred outside the Aerodrome premises. Chargesheet was issued to the workman.

11. Manju Shree Sarkar in her affidavit of evidence has stated that workman was making indecent gestures to her on 25-6-99. In her cross-examination, she says she had not submitted report to police, she was unable to say any reason for it. She narrated incident to Shri Kamlesh Sharma. The evidence of Kamlesh Sharma is silent about the same.

12. Management's witness Rakesh R. Sahay, Aerodrome Officer in his evidence says that he was incharge at Dumna Airport Jabalpur from 1998 to 2000. He had issued chargesheet to workman on 27-12-94. That on 26-11-98, workman had applied for Casual Leave. On that day, workman was present on Airport Premises on being asked. Workman stated that he had come for some personal work in the office. The witness is further stated that around 12'o clock, workman was found in an inebriated condition and was seen abusing Shri Kamlesh Sharma, Vineet Tiwari, Najeeb Khan and S.K. Gautam. He was using filthy language shouting that — "you all are stooge of Aerodrome officer. That I can get the Aerodrome Officer transferred any moment". Shri Kamlesh orally complained on 26-11-98. That workman was told to submit application to the Aerodrome Officer directly. That on same day, upon alighting from the staff bus at Nagar Nigam, Shri Najeeb Khan was verbally abused and threatened by workman that he will be killed. Entire affidavit of Shri Rakesh R. Sahay is devoted about different incidents occurred in respect of other employees Kamlesh Sharma, Najeeb Khan, Vineet Tiwari and S.K. Gauram. That the workman was called for operational duty on 25-7-99 but he did not come for duty on Sunday. On 31-10-99 workman was informed for operational duty but he did not report for duty. Rakesh R. Sahay in his cross-examination says chargesheet issued by him included 3 charges. The charges were for violation of conduct rules. The facts were not stated as to what was the misconduct. Charge No. 2 was in respect of violation of



provision of Regulation 4 (ii) 6(6) 5(7) 5(9) and 5(18) of Regulation Act 1998. 3rd charge was of habit of threatening to kill and verbally/physically abusing co-workers. He did not referred allegation of sexual harassment to the Committee, no FIR was lodged against workman. That he himself prepared his affidavit that he readover documents. He had discussed with Union Office bearers. The memorandum of negligence of duties was issued. In his re-examination, Rakesh R. Sahay says he issued chargesheet, chargesheet bears his signature. In his cross-examination, Rakesh R. Sahay says that Appointing Authority of workman is Regional Executive Director, Mumbai. It is clear from above that Rakesh R. Sahay was not Appointing Authority, he was not competent to issue chargesheet. There is no absolute explanation that he was authorized by the Appointing Authority to issue chargesheet.

13. Document Exhibit M-2 notification in respect of prohibition of sexual harassment of working women. Exhibit M-2(a) is memorandum dated 13-11-99 in the matter of sexual harassment of working women as per directions issued by the Director. Exhibit M-3 is copy of C.D.A Rules. Exhibit M-4 is complaint submitted by Najeeb Khan. Exhibit 4(a) is complaint submitted by Shri M.K. Deshmukh alleging that the workman had given threats. Document Exhibit M-5 shows Rakesh R. Sahay issued memorandum to the workman on 27-11-98. That workman had requested for leave and how he was found at Aerodrome. That he requested leave on false ground. Said memorandum does not refer to any of the allegations of indecent behaviour with Manju Shree Sarkar, threats given to M.K. Deshmukh, Najeeb Khan and abuses given to Shri Kamlesh Sharma and others.

14. Manju Shree Sarkar in her report Exhibit M-1 has alleged indecent gestures made by workman against her. Workman had submitted explanation to memorandum issued by Aerodrome Officer. Letter Exhibit M-7 was issue by Shri Rakesh Sahay to Executive Director Mumbai requesting appointment of Enquiry Officer. Exhibit M-9 is memorandum issued by Aerodrome Officer himself. It is accompanied with Articles of charges, I, II and III. The details of incident are not narrated.

15. There is some evidence stated by the management's witness that workman was abusing and threatening the witnesses, their evidence is not shattered to disbelieve. However the chargesheet is issued by Incompetent Authority Rakesh Sahay, Aerodrome Officer. As per evidence in cross-examination of management's witness Rakesh Sahay, the appointing authority of workman is Regional Executive Director, Mumbai. Therefore Ist Party workman could not be dismissed from service by lower authority than his Appointing Authority. Therefore the order of dismissal of workman issued is

illegal. For above reasons, I record my finding in Point No. 1, 2 accordingly.

16. **Point No. 3-** In view of my finding in Point No. 1, 2 the order of dismissal issued by incompetent authority is illegal, the question arises whether the workman is entitled to reinstatement with back wages. The order of dismissal is illegal. Therefore workman cannot be denied reinstatement in service. With respect to back wages, learned counsel of management has placed reliance in:

"Case of J.K. Synthetics Ltd., *versus* K.P. Agrawal and another reported in 2007(2) Supreme Court Cases 433. Their Lordship dealing with back wages entitlement on misconduct reinstatement back wages do not follow as a natural or necessary consequence of such reinstatement. Award of back wages for period when employee has not worked may amount to rewarding delinquent employee and punishing employer for taking action for the proved misconduct committed by the employee. That should be avoided. However in case employee is exonerated of the misconduct or it is found that employee was being victimized etc. then the principles applicable would be as those in case of illegal termination."

In present case, there is some evidence supporting the misconduct alleged against workman, abusing and threatening co-employees. However the order of dismissal is issued by incompetent authority i.e. Aerodrome Officer who is not Appointing Authority is illegal. Workman has not stated in his affidavit of evidence how he is maintaining his family after dismissal from service. He has not adduced evidence on other issues after enquiry was found vitiated. Considering above aspects, in my considered view, reinstatement of Ist party workman with 40% back wages would be appropriate. Accordingly I hold my finding on Point No. 3.

17. In the result, award is passed as under:—

(1) Action of the IInd party management dismissing Ist party workman by order dated 4-5-2000 is not proper and legal.

(2) IInd party is directed to reinstate workman Shri Sunil Kumar Khare with continuity of service and 40% back wages.

R.B. PATLE, Presiding Officer

नई दिल्ली, 8 जनवरी, 2014

का०आ० 296.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कैमोर सीमेंट वर्क्स जबलपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 168/91)

प्रकाशित करती है जो केन्द्रीय सरकार को 6/1/2014 को प्राप्त हुआ था।

[सं० एल-29012/26/91-आई आर (एम)]  
जोहन तोपनो, अवर सचिव

New Delhi, the 8th January, 2014

**S.O. 296.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 168/91) of the Cent. Govt. Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Kymore Cement Works, Jabalpur and their workman, which was received by the Central Government on 6/1/2014.

[No. L-29012/26/91-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/168/91

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Bharat Prasad Shukla,  
Secretary, Kymore Cement Mazdoor Congress,  
Shramdham, Kymore,  
Distt. Jabalpur (MP) .....Workman/Union

*Versus*

General Manager,  
Kymore Cement works,  
Kymore and Bahmangaon Mines,  
PO Kymore,  
Distt. Jabalpur .....Management

#### AWARD

(Passed on this 11th day of December 2013)

1. As per letter dated 26-9-91/3-10-91 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-29012/26/91-IR(Misc.) The dispute under reference relates to:

"Whether the action of the management of Kymore Cement Works, Kymore in terminating the services of Shri Bundu Khan Ex. Electrician T.No. 2/232 by order dated 9-1-89 is justified? If not, to what relief the concerned workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of Claim at Page 4/1 to 4/8. Claim of Ist party workman through Union is that IInd party are running Cement Factory at various places throughout the country and they have owned various mines at various places. That Shri Bundu Khan was active Trade Union worker of Kymore Cement Mazdoor Congress. He used to take part in Union activities time to time. That he is falsely implicated for theft of Five Numbers English Electric Make Fuses and victimized management of SECL wanted to get rid of Bundu Khan and conspired to implicate him in theft case. That on 13-7-88, Bundu Khan was on duty. He used to attend duties in Company's bus. He had not come on duty on his motorcycle.

3. It is further contended that on 15-7-88, prevelous and vague chargesheet was issued to Bundu Khan that on 13-7-88, Five Numbers English Electric Make Fuses were found in dicky of his motorcycle around 4.30 PM. It is submitted that the charges are concocted. The charges were denied by the workman. Dy. General Manager was appointed as Enquiry Officer. Management's Representative was not appointed. The enquiry was not conducted properly. The General manager was sitting in Enquiry Proceedings. Statement of witnesses were recorded, principles of natural justice were not followed. Enquiry Officer himself cross-examined witness of the management therefore enquiry is vitiated. The findings on Enquiry officer are perverse. Provision under Section 33 (B) of I.D. Act was not obtained before dismissal of service. Punishment of dismissal imposed on him on 9-1-89. That the punishment is illegal. Workman prayed for his reinstatement with back wages.

4. IInd party filed Written Statement at Page 9/1 to 9/17. The relief prayed by workman is denied. IInd party submits that Kymore Cement Mazdoor Congress represents majority employees of Lime stone mines. The mine has Union named A.C.C. Quarry Mazdoor Sangh. Said Union has been approved. That the M.P. Industrial Relations Act does not apply to the mines. There is no question of Kymore Cement Mazdoor Congress being representative of recognized Union. Katni Refractory Works is under the supervision and control of the General Manager of Kymore Cement Works. Shri Bharat Prasad Shukla is not Secretary of the Mazdoor congress. He has no right to file proceeding on behalf of Bundu Khan. The proceeding is not tenable. IInd party denied allegations that the chargesheet was issued to workman because of his Union activities. The allegation of dismissal by victimization has been denied. It is denied that management of IInd party wanted to get rid of Bundu Khan. IInd party submits that Shri D.P. Khare caught red handed while trying to take away Five Numbers English

Electric Make Fuses. It is denied that the management with his help falsely implicated Bundu Khan for theft. IInd party denies that Bundu Khan had come for his duty on 13-7-88 by company bus. It is reiterated that Bundu Khan has come on Motor cycle and Five Numbers English electric Make Fuses were found in dicky of his motorcycle and chargesheet was issued.

5. IInd party denies that Enquiry Officer was biased and acted as prosecutor, cross-examined witnesses of the management. It is denied that General Manager was present during Enquiry Proceeding. Statements of management witnesses were recorded. However, IInd party did not dispute that Management Representative was not appointed. The contentions of Ist party workman that he was not on duty on 13-7-88 is after thought. The IInd party reiterates that enquiry was conducted as per Rules following principles of natural justice. Charges against workman were framed of theft that he committed theft of Five Numbers English Electric Make Fuses. Considering serious misconduct proved against workman, punishment of dismissal from service is imposed. The allegation of Union Activities are denied. On such ground, IInd party prays for rejection of claim of workman.

6. My predecessor *vide* order dated 27-2-2012 held Departmental Enquiry conducted by management is not legal, proper and justified. Management was given opportunity to prove misconduct in Court.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- |   |                    |
|---|--------------------|
| "(i) Whether the Ist party workman committed theft of Five Numbers English Electric Make Fuses on 13-7-88 is proper?" | In Negative        |
| (ii) Whether the punishment of dismissal from service imposed against workman is legal and proper?"                   | In Negative        |
| (iii) If not, what relief the workman is entitled to?"  | As per Final Order |

#### REASONS

8. As discussed above, the enquiry conducted by management against workman is found vitiated. Management was granted permission to prove misconduct in Court. The chargesheet issued to workman is produced with list. Charges against workman are of committing theft of Five Numbers English Electric Make HRC 400 Amps Fuses costing of Rs. 1250/- misconduct alleged under

Clause 16 (iv) covering theft for willfull damage loss caused to the company. The workman pleaded not guilty. After the enquiry conducted against workman is found vitiated, the management was given opportunity to prove the charge. Management did not adduce evidence. Workman also not adduced evidence. Ordersheet dated 15-7-2013 wrongly shows that the case was fixed for evidence on other issues. As management failed to adduce evidence to prove charge. The charges alleged against workman narrated above are not proved. Absolutely no evidence is adduced by the management. Therefore order of dismissal of workman is illegal. For above reasons, I record my finding in Point No. 1, 2 in Negative.

9. **Point No. 3**— In view of my finding in Point No. 1, 2 that the charge against workman of theft is not proved, punishment of dismissal from service is illegal, question arises whether the workman is entitled for reinstatement with back wages. As punishment of dismissal is illegal, workman deserves reinstatement in service. Workman is claiming full back wages. However he has not adduced evidence after enquiry was vitiated. In absence of evidence of workman what work he is doing all the years, full back wages cannot be allowed to him. Management also failed to adduce evidence whether the workman is in gainful employment. Considering those aspects in my considered view, grant of 40% back wages would be appropriate. Accordingly I record my finding in Point No. 3.

10. In the result, award is passed as under:—

- (1) Action of IInd party management of Kymore Cement Works, Kymore in terminating the services of Shri Bundu Khan Ex. Electrician T. No. 2/232 by order dated 9-1-89 is not proper and legal.
- (2) IInd party is directed to reinstate workman with 40% back wages with continuity of service.

R.B. PATLE, Presiding Officer

नई दिल्ली, 8 जनवरी, 2014

का०आ० 297.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मलाजखंड कॉपर प्रोजेक्ट बालाघाट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायलय, जबलपुर के पंचाट (संदर्भ संख्या 191/87) को प्रकाशित करती है जो केन्द्रीय सरकार को 6.1.2014 को प्राप्त हुआ था।

[सं० एल-43011/3/87-डी-3(बी)]

जोहन तोपनो, अवर सचिव

New Delhi 8th January, 2014

**S.O. 297.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 191/87) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Malajkhand Copper Project, Balaghat and their workman, which was received by the Central Government on 6-1-2014.

[No. L-43011/3/87-D-3(B)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/191/87

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,  
Bhartiya Khanij Mazdoor Sangh (BMS),  
Post Malajkhand.  
Distt. Balaghat

...Workman/Union

*Versus*

Executive Director,  
Malajkhand Copper Project,  
H.C.Ltd., Post Malajkhand,  
Distt. Balaghat

...Management

#### AWARD

(Passed on this 4<sup>th</sup> day of December, 2013)

1. As per letter dated 9-9-87 by the Government of India, Ministry of Labour, New Delhi, there reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-43011/3/87-D-3(B). The dispute under reference relates to:

"Whether the action of the management of Malajkhand Copper Project, H.C. Ltd. in dismissing the services of S/Shri Sant Masih and Mansingh Thakre, Technician Grade-III *w.e.f.* 7-10-86 is legal and justified? If not, to what relief the workmen are entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workmen field statement of claim through Union Bhartiya Khanij Mazdoor Sangh. Case as per statement of claim submitted by Union is that both Sant Masih and Mansingh Thakre were working as Technician Grade II with IInd party Malajkhand copper

Project. They were member of Bhartiya Khanji Mazdoor Sangh. Chargesheet was served on him 12-7-85 by Dy. General Manager (P&A). Both the workmen were suspended from duty. The allegations against both the workmen were that they were demanding and accepting illegal gratification from Driver of Truck in consideration of loading of concentrates in the trucks in such a manner that the trucks do not get damaged. They have been collecting huge amount since past 6-7 months as illegal gratification. The amount so collected was distributed amongst them and two supply mazdoor were sharing the illegal gratification. It was alleged that he compelled and adopted coercive method on supply of labours and other employees of loading section for collecting illegal gratification. That Mansingh Thakre threatened one Shri S. Prasad Technician Grade II with dire consequences. He refused to collect money from Truck Drivers and cooperation to investigation agents. The misconduct was alleged against Clause 30(II), 30(IX), 30(VII), 30(IX) & 30(LI) of standing orders.

3. Both the workmen denied charges against them. DE was held against both the workmen. Enquiry Officer concluded the charges were proved. On report of Enquiry Officer, services of both workmen were terminated from 7-10-88. Union submits that findings of Enquiry Officer were perverse. The Drivers Harbans Singh, Ramzan and Mazdoors Ismail Khan and Ranglal were not examined. They were alleged to be witnesses. The copies of statements recorded in preliminary enquiry were not given to them. The copies of the statements recorded in preliminary enquiry cannot be considered as evidence. That evidence of Sarva Shri Kaul, Neghi and N.P. Tiwari cannot be considered as those material witnesses were not cross-examined. The findings of Enquiry Officer are perverse. Both the workmen were dismissed from service without obtaining permission under Section 33(2)(B) of I.D. Act. That the alleged misconduct is not proved from evidence in Enquiry Proceedings. The dismissal of their services is illegal. That alleged incident is dated 29-6-85. The final order was passed after 15 months in October, 1986 is illegal. Charges were in violation of standing orders. The appeal was rejected without application of mind. Charges of using illegal gratification are false. The evidence of Mr. S.B. Sinha about his complaints of illegal gratification is not relevant. Mr. Sinha admitted that personally he had not seen the employees receiving gratification. On such ground, Union prays for reinstatement of both the workmen with back wages.

4. IInd party filed Written Statement at Page 7/78 to 7/80. The claim of the Union is denied outright. It is submitted that chargesheet was issued on 12-7-85 for the allegation of demanding illegal gratification from Truck Drivers. Workmen were found collecting amount of illegal



gratification of tune of Rs. 100 to 300/- per day during past 6-7 months. On 29-6-85, they demanded accepted Rs. 10/- as gratification from Drivers of certain trucks. That Enquiry Officer Mr. S.M. Rizwan was appointed. The enquiry was conducted giving full opportunity for defence of the workman. Enquiry Officer recorded finding. That charges against workmen are proved. Considering the proved misconduct of accepting illegal gratification, both workmen were dismissed from service is proper. IInd party submits that workmen are not entitled to relief claimed by them.

5. Union filed rejoinder at page 6/19 to 6/22 reiterating its contentions in Statement of Claim that enquiry was not properly conducted, the services are not proved. Termination of service is illegal.

6. My predecessor has passed Award dated 12-11-91 holding that termination of service of both workmen is justified. Workmen are not entitled to any reliefs.

7. Said award was challenged by Shri Mansingh Thakre filing Writ Petition No. 1186/92. Said workman died during pendency of Writ Petition on 20-6-04, has given representations were brought on record. Writ Petition are decided on 26-4-07. The award is quashed. The matter is remanded back. In Para-6 of the judgment Hon'ble High Court issued directions to decide the matter duly applied in mind to all issues raised by Petitioner raising the dispute. On quantum of punishment imposed upon petitioner. If substance is contention of petitioner is found, retirement benefits may be extended to the LR's.

8. It appears that the record of the reference was weeded out on 27-5-03. The reference has been reconstructed.

9. My predecessor has held enquiry conducted against workman is legal and valid as per his order dated 11-3-2011.

10. Considering pleadings between parties and findings that enquiry conducted against workman is legal and valid, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- |  |             |
|--|-------------|
| (i) Whether the alleged misconduct of receiving illegal gratification, giving threat to kill Shri S. Prasad are proved from evidence in Enquiry proceedings? | In Negative |
| (ii) Whether the punishment of dismissal imposed against Lage Mansingh is legal and proper?  | In Negative |

- (iii) If not, what relief the Workman is entitled to?" As per final order.

### REASONS

11. Before deciding the matter, I make it clear that my predecessor has passed Award dated 12-11-1991 rejecting claim of both the workmen. The award was challenged filing Writ Petition 1186/1992 only by Mansingh Thakre who died during pendency of Writ Petition. His LR's were brought on record. Thus the matter has been remanded. Ist party workman Sant Masih has not challenged Award dated 12-11-1991, therefore the proof of charges alleged against Sant Masih and legality of punishment imposed against him is not required to be decided. Only proof of the charges against Mansingh Thakre and punishment of dismissal imposed against him needs to be decided. As the enquiry is found legal, question remains as to whether charges against Mansingh Thakre are proved from Enquiry proceedings, whether the punishment of dismissal is proper?

12. The record of Enquiry Proceedings is produced for reconstructions. Management Representative was K.G.M. Prasad. He had proposed to produce 8 witnesses. The record of Enquiry Proceedings shows that Management Representative had not produced Ismail Khan, Ramlal in the enquiry. That 4 witnesses were not produced by the Management's Representative. Delinquent employee has no objection about it. Ismail Khan, Ramlal and Harbans Singh were outsiders and they were not produced in the Enquiry proceedings by management. Statement of Pramod Shankar Singh was recorded. He had produced statements of those witnesses recorded in preliminary enquiry. Enquiry was conducted on the point how Pramod Shankar Singh was saying that there was no influence on that witnesses stated in the record. Any of the witnesses was not examined in the Enquiry Proceedings. There was no question of their cross-examination by the Defence assistant. As such there is no evidence in Enquiry proceedings about giving gratification amount and its acceptance by workman Late Mansingh Thakre.

13. The other charge against Mansingh Thakre is about giving threats to Shri S. Prasad. The evidence of management's witness Pramod Shankar is not saying anything about said charge. The careful reading of the statement of witness in Enquiry Proceeding shows that Rs. 10/- note was spent by him for tea and 5 Re note No. 70U 611013 was recovered from him. There is no evidence that said note was received by him as gratification amount from Truck Drivers. Statement of Shri S. S. Sinha at Page 7/23 shows that he had not seen delinquent workman receiving gratification amount. The statement at Page 7/25

finds reference that after said incident, Mansingh had threatened to kill him. The incident was not reported to the police. Except where reference in question put to the witnesses in Enquiry Proceedings, there is no cogent evidence about the threats given by Mansingh Thakre to S. Prasad to kill him. The details when such threat was given, the place of giving threat is not seen in evidence in Enquiry Proceedings.

14. Award was passed in 1991, the Writ Petition was decided in 2007. The record was weeded out in 2003. Record of Enquiry Proceedings is reconstructed at Page 7/2 to 7/77, 6/61 to 6/78. I do not find cogent evidence. Mansingh Thakre giving threat to Shri S. Prasad to kill him. If he does not recover gratification amount from Truck Driver. Thus said charge is also not proved from evidence in Enquiry Proceedings. Therefore I record my finding in Point No. 1 in Negative.

15. Point No. 2-Affidavit of evidence of widow of Mansingh is filed. She has narrated history that the husband died during pendency. She was not witness in the Enquiry proceedings. She has only stated that the witnesses for not stating Mansingh receiving gratification amount etc. Her evidence remained unchallenged. IInd party filed to appear. Written notes of arguments and submission on behalf of workman only in view of my findings in Point No. 1 that misconduct alleged against deceased workman Mansingh Thakre are not proved. The punishment of dismissal suffers cannot be said legal. The order of his dismissal deserves to be set-aside. Workman died on 10-6-04. There is no evidence whether deceased workman was in gainful employment. Question of back wages arises. Considering special circumstances of he case that award dated 12-11-91 passed by my predecessor was challenged in Writ Petition before High Court. During pendency of Writ Petition, workman Mansingh died. In my considered view, 40% back wages from date of dismissal till his death is justified. After death of workman, his widow may be given retiral benefits. Accordingly I record my findings in Point No. 2.

16. In the result, award is passed as under:—

- (1) Action of the management of Malajkhand Copper Project, H.C. Ltd. in dismissing the services of S/Shri Sant Masih and Mansingh Thakre, Technician Grade-II *w.e.f.* 7-10-86 is proper and legal.
- (2) IInd party is directed to pay 40% back wages to deceased Mansingh from his dismissal till his death 10-6-04. After his death, his widow Malti Thakre may be considered for retiral/pensionary benefits.

R.B. PATLE, Presiding Officer

नई दिल्ली, 8 जनवरी, 2014

का०आ० 298.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भिलाई स्टील प्लांट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 12/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 6/1/2014 को प्राप्त हुआ था।

[सं० एल-26012/2/2008-आईआर(एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 8th January, 2014

**S.O. 298.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2008) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bhilai Steel Plant and their workman, which was received by the Central Government on 6/1/2014.

[No. L-26012/2/2008-IR(M)]

JOHAN TOPNO Under Secy.

#### ANNEXURE

#### BEFORE SHRI J.P. CHAND, PRESIDING OFFICER CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/12/2008

Date: 23.09.2013.

Party No. 1 : The Managing Director,  
Bhilai Steel Plant,  
Bhilai, Distt. Durg,  
Chhattisgarh.

*Versus*

Party No. 2 : The General Secretary,  
Chhattisgarh Sangramin  
Shramik Sangh, Indiranagar,  
Chandaini Bhata, PO Dalli,  
Rajhara  
Durg (Chhattisgarh)

#### AWARD

(Dated: 23rd September, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial

dispute between the employers, in relation to the management of Bhilai Steel Plant and their workman.

Shri P.K. Trivedi, for adjudication, as per letter No.L-26012/2/2008-IR (M) dated 07.04.2008, with the following schedule:—

"Whether the action of the management of Bhilai Steel Plant (SAIL) in their Iron Ore Complex, Dallirajhara, Durg in punishing Shri P.K. Trivedi, Sr. Operator, HEME with the punishment of "Reduction of Lower grade of S-6 for a period of 2 years with cumulative effect" *vide* letter of punishment No. OMQ/RJM/ESTT/PUN/2005/2012 dated 21/09/2005 of Dy. G.M. Raajhara Mech. Mines is justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "Chhattisgarh Sangrami Shramik Sangh", ("the union" in short) filed the statement of claim on behalf of the workman Shri P.K. Trivedi, ("the workman" in short) and the management of Bhilai Steel Plant, ("party No. 1" in short) filed the written statement.

The case of the workman as presented by the Union in the statement of claim is that while the workman was working as a senior operator (HEME) in Rajhara group of mines of party No. 1, charge sheet dated 02.02.2004 containing fabricated charges was served on him and there was a general dispute regarding the illegality over the pay scale involving HEME operators in the mines and all the HEME operators including the workman were agitating over the issue and the matter was under discussion with the management, but the party No. 1 submitted the charge sheet against the workman misrepresenting the facts and though show cause was filed by the workman denying the charges, party No. 1 did not appreciate the same and enacted the drama of conducting the departmental inquiry and imposed the punishment of reduction of lower grade of S-6 for a period of 2 years with cumulative effect and as the workman was the President of the union, Chhattisgarh Sangrami Shramik Sangh, he was targeted by the party No. 1 to harm the union and the punishment is ill motivated and punitive and the action taken by the party No. 1 was illegal and taken only to suppress their rightful demand.

Prayer has been made by the Union to adjudicate the dispute and to give them justice and to direct the party No. 1 to withdraw the punishment retrospectively.

3. The party No. 1 in their written statement have pleaded *inter-alia* that the workman committed serious misconduct during the course of employment and as such, he was kept under suspension *vide* order dated 09.02.2004 and he was also issued with the charge sheet dated 13.02.2004 and seven charges were levelled against him and the workman submitted his reply to the charge sheet and as the reply was found unsatisfactory, it was decided to conduct a department enquiry and accordingly, Shri R.S. Prasad was appointed as the enquiry officer *vide* order dated 28.02.2004 and the workman appeared in the enquiry with his co-worker and during the enquiry, six documents and the list of witnesses were produced and the documents were admitted into evidence and marked as Exts. PD/1 — PD-VI-B and after the closure of the prosecution case, the workman submitted his written statement and he was examined and cross-examined and the enquiry officer submitted his enquiry report holding that four charges, out of the seven charges to have been proved fully, one charge to have been partially proved and two charges not to have been proved against the workman and after receipt of the enquiry report, a show cause notice alongwith the copy of enquiry report was issued and the workman made a representation on 24.10.2004 and after careful consideration of the records of the enquiry and connected documents, the competent authority agreed with the findings of the enquiry officer and observed that the gravity of the charges was such, as it would have attracted removal from services, but considering the young age of the workman and to give a chance of improvement in future, the Disciplinary Authority took a lenient view and imposed the punishment of down grading *i.e.* reduction of lower grade of S-6 for a period of 2 years with cumulative effect *vide* order dated 21.09.2005 and against the order of punishment, the workman filed an appeal to the Appellate Authority, but the appeal was rejected on 05.12.2005 and their action is just and proper and the workman is not entitled to any relief.

4. Even though, this is not a case of dismissal, termination or removal of the workman from services and only a case of imposition of punishment of reduction to lower grade, after conducting a departmental enquiry against the workman, in the interest of justice, the fairness or otherwise of the departmental enquiry was been taken as preliminary issue for consideration and *vide* order dated 28.12.2012, the departmental enquiry was held to be legal and proper and by following the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that the initiation of the departmental enquiry was ill motivated and the findings of the enquiry officer are perverse, as the same are not based on any evidence on record of the enquiry and without consideration of the evidence adduced by the workman in his defence and the punishment is shockingly disproportionate to the alleged misconduct and as such, the order of punishment is liable to be set aside.

6. Per contra, it was submitted by the learned advocate for the Party No. 1 that the findings of the enquiry officer are based on the evidence on record of the enquiry and the enquiry officer has dealt with the charges chronologically and commission of minor and major misconducts have been proved against the workman in a properly conducted departmental enquiry against him and looking into the seriousness of the misconduct proved against the workman, he deserved for capital punishment, but the competent authority taking a lenient view imposed lesser punishment to give the workman one more opportunity to improve his conduct and performance and the punishment imposed on the workman is proportionate to the gravity of misconduct proved against him. It was further submitted by the learned advocate for the Party No. 1 that as this is not a case of dismissal and discharge, there is no scope for the Tribunal to interfere with the punishment by exercising the power u/s, 11-A of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocate for the Party No. 1 placed reliance on the decision reported in (2006) 5 SCC-201 (South Indian Cashew Factories worker's union Vs. Kerala State Cashew Development Corporation Ltd. & others).

7. Before delving into the merit of the matter, I think it proper to mention the principles enunciated by the Hon'ble Apex Court in the decision as mentioned above. The Hon'ble Apex Court have held that:—

"D. Labour Law — Industrial Disputes Act, 1947 — S. 11A — Applicability - Held, applicable only in case of dismissal or discharge of a workman.

If the enquiry is fair and proper then in the absence of any allegations of victimization or unfair labour

practice the Labour Court has no power to interfere with the punishment imposed. Section 11-A of the Industrial Disputes Act, 1947 gives ample power to the Labour Court to reappraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. But, that section is applicable only in the case of dismissal or discharge of a workman. Since Section 11-A was not applicable, the labour Court had no power to reappraise the evidence to find out whether the findings of the enquiry officer were correct or not or whether the punishment imposed was adequate or not."

The principles enunciated by the Hon'ble Apex Court as mentioned are squarely applicable to the case in hand. Admittedly, this is not a case of dismissal or discharge of the workman from services. It is already held that the departmental enquiry held against the workman was legal, proper and in accordance with the principles of natural justice. Commission of major misconducts has been proved against the workman in a properly conducted departmental enquiry. It is also found from record that the enquiry officer after analysing the evidence adduced by the parties in the departmental enquiry in a rational manner and dealing with the charges chronologically has given his findings. The findings of the enquiry officer are based on the evidence on record of the enquiry. Hence, the findings of the enquiry officer cannot be said to be perverse. There is no legal evidence on record to show that this is a case of victimization or unfair labour practice.

So, applying the principles enunciated by the Hon'ble Apex Court reported in [2006] 5-SSC-201 (Supra) to this case and in view of the discussions made above, it is found that there is no scope to interfere with the punishment. Hence, it is ordered:—

#### ORDER

The action of the management of Bhilai Steel Plant (SAIL) in their Iron Ore Complex, Dallirajhara, Durg in punishing Shri P.K. Trivedi, Sr. Operator, HEME with the punishment of "Reduction of lower grade of S-6 for a period of 2 years with cumulative effect" vide letter of punishment No. OMQ/RJM/ESTT/PUN/2005/2012 dated 21.09.2005 of Dy. G.M. Raajhara Mech. Mines is justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer



नई दिल्ली, 8 जनवरी, 2014

**का०आ० 299.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भिलाई स्टील प्लांट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 06/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 6/1/2014 को प्राप्त हुआ था।

[सं० एल-26012/6/2008-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 8th January, 2014

**S.O. 299.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 06/2008) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bhilai Steel Plant and their workman, which was received by the Central Government on 6/1/2014.

[No. L-26012/6/2008-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,  
CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/06/2008** Date: 23.09.2013.

**Party No.1** : The Managing Director,  
Bhilai Steel Plant,  
Bhilai, Distt. Durg,  
Chhattisgarh

*Versus*

**Party No. 2** : The General Secretary,  
Chhattisgarh Sangramin  
Shramik Sangh, Indiranagar,  
Chandaini Bhata, PO Dalli,  
Rajhara, Durg (Chhattisgarh)

#### AWARD

(Dated: 23rd September, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bhilai Steel Plant and their workman, Shri V.K. Kurre, for adjudication, as per letter No. L-26012/6/2008-IR (M) dated 07.02.2008, with the following schedule:—

"Whether the action of the management of Bhilai Steel Plant (SAIL) in their Iron Ore Complex, Dallirajhara, Durg

in punishing Shri V.K. Kurre, Sr. Operator, HEME with the punishment of "Reduction of lower grade of S-5 for a period of 2 years with cumulative effect" *vide* letter of punishment No. OMQ/DLM/ESTT/PUN/2005/1850 dated 22/09/2005 of Dy. G.M. Raajhara Mech. Mines is justified? If not, to what relief the workman is entitled?

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "Chhattisgarh Sangrami Shramik Sangh," ("the union" in short) filed the statement of claim on behalf of the workman, Shri V.K. Kurre, ("the workman" in short) and the management of Bhilai Steel Plant, ("Party No. 1" in short) filed the written statement.

The case of the workman as presented by the union in the statement of claim is that while the workman was working as a senior operator (HEME) in Rajhara group of mines of Party No. 1, charge sheet dated 02.02.2004 containing fabricated charges was served on him and there was a general dispute regarding the illegality over the pay scale involving HEME operators in the mines and all the HEME operators including the workman were agitating over the issue and the matter was under discussion with the management, but the Party No. 1 submitted the charge sheet against the workman misrepresenting the facts and though show cause was filed by the workman denying the charges Party No. 1 did not appreciate the same and enacted the drama of conducting the departmental inquiry and imposed the punishment of reduction to S-5 Grade for a period of 2 years with cumulative effect and as the workman was the General Secretary of the union, Chhattisgarh Sangrami Shramik Sangh, he was targeted by the Party No. 1 to harm the union and the punishment is ill motivated and punitive and the action taken by the Party No. 1 was illegal and taken only to suppress their rightful demand.

Prayer has been made by the union to adjudicate the dispute and to give them justice and to direct the Party No. 1 to withdraw the punishment retrospectively.

3. The Party No. 1 in their written statement have pleaded *inter-alia* that the workman is a habitual offender and he was issued with several charge sheets and lesser punishment was imposed against him in the past with a view to give him chance to improve his conduct, but he did not show any improvement in his conduct and continued to commit such misconduct one after the other and as the workman committed serious misconduct during the course of employment, he was kept under suspension *vide* order dated 09.02.2004 and he was also issued with the charge sheet dated 12.02.2004 and six charges were levelled against him and the workman submitted his reply to the charge sheet and as the reply was found unsatisfactory, it was decided to conduct a departmental enquiry and accordingly, Shri R.S. Prasad was appointed as the enquiry officer *vide* order dated 01.03.2004 and the workman appeared in the enquiry with his co-worker and during the enquiry, six

documents and list of witnesses were produced and the documents were admitted into evidence and marked as Exts. PD/1—PD/6 and after the closure of the prosecution case, the workman was allowed to adduce evidence in his defence and the workman examined eight witnesses and on 05.03.2005, after the examination and cross-examination of the 8th defence witness, on behalf of the workman, when the workman was asked to bring the remaining witnesses, he scored out his signature, which he had put on the proceedings of the enquiry, stating that he was not intimated about the date of the proceedings in writing and was orally informed and thereafter, the workman did not take part in the departmental enquiry, in spite of all possible steps taken by the enquiry officer and adjourning the enquiry on several occasions, so, the enquiry officer had no other option than to proceed with the enquiry *ex parte* against the workman and the enquiry was closed on 22.03.2005 and the enquiry officer submitted his report on 08.04.2005, holding the charges to have been proved against the workman and the workman was issued with a show cause notice along with a copy of the enquiry report and as no satisfactory explanation was submitted by him, the competent authority by order dated 22.09.2005 imposed the punishment of reduction of lower grade of S-5 for a period of two years with cumulative effect, and though the workman deserved for capital punishment, but to give him another opportunity, the competent authority imposed lenient punishment and the punishment imposed on the workman is proportionate to the gravity of the misconduct proved against him and the workman is not entitled to any relief.

4. Even though, this is not a case of dismissal, termination or removal of the workman from services and only a case of imposition of punishment of reduction to lower grade, after conducting a departmental enquiry against the workman, in the interest of justice, the fairness or otherwise of the departmental enquiry was taken as a preliminary issue for consideration and *vide* order dated 28.12.2012 the departmental enquiry was held to be legal and proper and by following the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that the initiation of the departmental enquiry was ill motivated and the punishment imposed against the workman is quite punitive and the initial appointment of the workman was in S-6 grade and at the time of imposition of the punishment, he was in grade-7 and it is established administrative principle that no person can be downgraded to below the grade in which he was initially appointed and the findings of the enquiry officer are perverse as the same are not based on any evidence on record of the enquiry and without consideration of the evidence adduced by the workman in his defence and the punishment is shockingly disproportionate to the alleged misconduct and as such, the order of punishment is liable to be set aside.

6. Per contra, it was submitted by the learned advocate for the Party No. 1 that the findings of the enquiry officer are based on the evidence on record of the enquiry and the enquiry officer has dealt with the charges chronologically and commission of minor and major misconducts has been proved against the workman in a properly conducted departmental enquiry against him and looking into the seriousness of the misconduct proved against the workman, he deserved for capital punishment, but the competent authority taking a lenient view imposed lesser punishment to give the workman one more opportunity to improve his conduct and performance and the punishment imposed on the workman is proportionate to the gravity of misconduct proved against him. It was further submitted by the learned advocate for the Party No. 1 that as this is not a case of dismissal and discharge, there is no scope for the Tribunal to interfere with the punishment by exercising the power u/s 11-A of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocate for the Party No. 1 placed reliance on the decision reported in (2006) 5 SCC-201 (South Indian Cashew Factories worker's union Vs. Kerala State Cashew Development Corporation Ltd. & others).

7. Before delving into the merit of the matter, I think it proper to mention the principles enunciated by the Hon'ble Apex Court in the decision as mentioned above. The Hon'ble Apex Court have held that:—

"D. Labour Law—Industrial Dispute Act, 1947-S. 11A Applicability—Held, applicable only in case of dismissal or discharge of a workman.

If the enquiry is fair and proper then in the absence of any allegations of victimization or unfair labour practice the Labour Court has no power to interfere with the punishment imposed. Section 11-A of the Industrial Disputes Act, 1947 gives ample power to the Labour Court to reappraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. But, that section is applicable only in the case of dismissal or discharge of a workman. Since Section 11-A was not applicable, the labour Court had no power to reappraise the evidence to find out whether the findings of the enquiry officer were correct or not or whether the punishment imposed was adequate or not."

The principles enunciated by the Hon'ble Apex Court as mentioned are squarely applicable to the case in hand. Admittedly, this is not a case of dismissal or discharge of the workman from services. It is already held that the departmental enquiry held against the workman was legal, proper and in accordance with the principles of natural justice. Commission of major misconducts has been proved against the workman in a properly conducted departmental

enquiry. It is also found from record that the enquiry officer after analyzing the evidence adduced by the parties in the departmental enquiry in a rational manner and dealing with the charges chronologically has given his findings. The findings of the enquiry officer are based on the evidence on record of the enquiry. Hence, the findings of the enquiry officer cannot be said to be perverse. There is no legal evidence on record to show that this is a case of victimization or unfair labour practice.

It is found from clause 30(2)(d) of the Standing Order that punishment of reduction to a lower grade or post or lower stage in a time scale can be imposed for major misconduct. The workman failed to show that there is any establishment administrative principle that an employee cannot be downgraded to below the grade in which he was initially appointed. There is nothing on record to show that the punishment imposed against the workman is not in accordance with the provisions of the Standing Order. The Punishment imposed against the workman also cannot be said to be shockingly disproportionate to the grave misconducts proved against him. So, applying the principles enunciated by the Hon'ble Apex Court the decision reported in (2006) 5-SCC-201 (Supra) to this case and in view of the the discussions made above, it is found that there is no scope to interfere with the punishment. Hence, it is ordered:—

#### ORDER

The action of the management of Bhilai Steel Plant (SAIL) in their Iron Ore Complex, Dallirajhara, Durg in punishing Shri V.K. Kusre, Sr. Operator, HEME with the punishment of "Reduction of lower grade of S-5 for a period of 2 years with cumulative effect" *vide* letter of punishment No. OMQ/DLM/ESTT/PUN/2005/1850 dated 22/09/2005 of Dy. G.M. Raajhara Mech. Mines is justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 8 जनवरी, 2014

**का०आ० 300.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पानीपत रिफाइनरी प्रोजेक्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 569/2005) प्रकाशित करती है जो केन्द्रीय सरकार को 6/1/2014 को प्राप्त हुआ था।

[सं० एल-30012/39/2003-आईआर(एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 8th January, 2014

**S.O. 300.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the Award (Ref. No. 569/2005) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh now as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Limited, Panipat Refinery Project and their workman, which was received by the Central Government on 6/1/2014.

[No. L-30012/39/2003-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

**PRESENT:** Sri A.K. RASTOGI, Presiding Officer.

Case No. I.D. No. 569/2005

Registered on 23/8/2005

Sh. Nand Lal, S/o Sh. Brij Lal, C/o BMS Office, Lal Batti Chowk, G.T. Road, Panipat.

...Petitioner

#### Versus

The Executive Director, Indian Oil Corporation Limited, Panipat Refinery Project, Baholi, Panipat.

...Respondent

#### APPEARANCES:

For the Workman : Sh. Karam Singh AR.

For the Management : Sh. S. Kaushal Advocate.

#### AWARD

(Passed on 11.7.2013)

Central Government vide Notification No. [L-30012/39/2003-IR(M)] Dated 4/11/2003, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of IOCL, Panipat Refinery in terminating the services of Sh. Nand Lal S/o Sh. Brij Lal, Technician Gr. IV w.e.f. 24.8.2001 is just and legal? If not, to what relief the concerned workman is entitled?"

As per claim statement the workman was in the employment of the management from 1998. He fell sick and sent application for leave from 16.6.2001 to 14.7.2001 under UPC along with medical certificate. But the management terminated his services on 23.8.2001 in violation of Section 25F, H, N and G of the Act though he had completed more than 240 days' service in a calendar year without any break. His termination is unlawful, arbitrary,



illegal and against the principles of natural justice. He has prayed for his reinstatement with full back wages and continuous service.

The claim was contested by the management and it was denied that he had sent any information about his illness or medical treatment from 16.6.2001 to 14.7.2001. According to the management the UPC showing the dispatch of medical certificate is false, fabricated and procured document. The workman remained absent from duty after 16.6.2001 and despite notice sent by registered post on 25.6.2001, 20.7.2001 and 30.7.2001. He continued to remain absent unauthorizedly and neither replied any of the notice. As per Certified Standing Orders of the company if an employee remains absent from duty for more than 8 days, the management will presume that he had abandoned the employment by his own accord, providing he returns and explain to the satisfaction of management about the reasons which compelled him to remain away from work. In that case management will be required to consider his case. In this case, action was contemplated after 68 days waiting and after sending due registered notice on three occasions. The workman failed to submit any explanation as asked for or till orders in question were passed. Actually workman was in the habit of remaining absent from duty. On previous occasions also he had been unauthorizedly absent. The action against the workman had been taken as per stipulation in the Standing Orders and hence, it is not a retrenchment attracting the provisions of Section 25F of the Act and there is no violation of Section 25H, G and O of the Act also. In the circumstances of the case the action of the management is fully justified and in order.

A replication was filed by the workman denying the receiving of any notice of management by the workman and it was alleged that the UPC is genuine. He had sent leave application along with medical certificate. Action if any could have been taken against the workman after a departmental inquiry.

In evidence the workman examined himself and filed the photocopies of the UPC receipt, medical certificate and leave application Exb. WW1 to WW3 respectively. At the stage of management evidence the workman absented himself and did not appear despite notices sent by registered post to him. Hence the case was ordered to proceed *ex parte* against him on 3.9.2010. Statement of management witness was recorded.

I have heard the learned counsel for management and perused the evidence on record. Learned counsel for the management argued that it is wrong to say that the workman had sent leave application along with medical certificate under UPC to management. In fact the medical certificate had been produced before the Conciliation Officer, as the workman himself had admitted during cross-examination that he had submitted a letter and medical certificate to the management before the Conciliation Officer. The letter and a copy of medical certificate are marked as "A" and "B". Among other the management had filed copy of notices

dated 25.6.2001, 20.7.2001 and 30.7.2001 Exhibit MW1/1½ and 1/3 sent by registered post. Letter dated 23.8.2001 Exhibit MW1/6 has also been filed by the management whereby the workman had been informed about treating him to have voluntarily abandoned his service and striking off his name from the rolls of the Corporation w.e.f. 16.6.2001.

Learned counsel for management argued that it cannot be accepted to that the workman had sent his leave application and medical certificate under UPC. If the medical certificate had been sent by him as alleged then how could he provide it to management during the conciliation proceedings. The management case therefore, is reliable that the leave application and medical certificate were not sent by the workman under UPC and he remained absent from duty unauthorizedly from 16.6.2001 and did not submit any explanation despite notice sent to him by registered post and as he had remained absent from duty unauthorizedly w.e.f. 16.6.2001 hence, the management was justified in treating the workman to have abandoned the employment after a lapse of 68 days as per Standing Orders and it is not a retrenchment. Hence, the violation of Section 25F of any other provision of the ID Act is not involved in the case. Learned counsel for management in this regard relied on *Hindustan Paper Corporation Vs. Purendu Chakrobarty and others* 1997 SCC(L&S) 244 wherein the respondent was an employee of the appellant Hindustan Paper Corporation. On 27.5.1988 had had applied for casual leave. On the next day an FIR was lodged against him under Section 302/201 read with Section 34 of the Penal Code. He continued to apply for extension of leave but the Corporation refused to sanction his applications and informed him that he was liable to be treated as an unauthorized absentee. The Corporation called for his explanation and finding his explanation to be not proper passed an order that under Rule 23(vi)(E) of the Hindustan Paper Corporation Conduct, Discipline and Appeal Rules. He had lost his lien on his appointment with Corporation. The Hon'ble Supreme Court held that holding of a full-fledged inquiry under Rule 25 was not necessary as loss of lien under said Rule does not amount to a penalty and a department inquiry was not needed. The need for departmental inquiry arises only when a penalty is sought to be imposed.

I agree with the learned counsel for the management that in the present case also the termination of the workman as per Standing Orders is not a penalty and neither it is a retrenchment. The provisions of ID Act regarding retrenchment are not applicable in the case and the termination of the services of the workman being according to Standing Order is legal and justified. He is not entitled to any relief. Reference is answered against the workman. Hard and soft copy of the award be sent to the Central Government as per the directions of the Central Government.

ASHOK KUMAR RASTOGI, Presiding Officer



नई दिल्ली, 8 जनवरी, 2014

**का.आ. 301.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअरपोर्ट अथॉरिटी ऑफ इंडिया हैदराबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 1/2005, 2/2005, 8/2005, 38/2004 & 40/2004) प्रकाशित करती है जो केन्द्रीय सरकार को 6.1.2014 को प्राप्त हुआ था।

[सं. एल-11011/63, 68, 33, 12 &amp; 10/2004 आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 8th January, 2014

**S.O. 301.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2005, 2/2005, 8/2005, 38/2004 & 40/2004) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India, Hyderabad and their workman, which was received by the Central Government on 6.1.2014.

[No. L-11011/63, 68, 33, 12 &amp; 10/2004-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT  
HYDERABAD**

**PRESENT:** SMT. M. VIJAYA LAKSHMI,  
Presiding Officer

Dated the 13th day of September, 2013

**INDUSTRIAL DISPUTES Nos.  
1/2005, 2/2005, 8/2005, 38/2004 & 40/2004**

**Between:**

The Jt. General Secretary  
Indian Airports Kamgar Union, C/o AAI,  
NAD, Begumpet,  
Hyderabad.

....Petitioner(s)/Union

**AND**

The Director,  
Airports Authority of India,  
Begumpet,  
Hyderabad - 500016.

....Respondent

**APPEARANCES:**

For the Petitioners(s) Union : M/s. Ch. Indrasena Reddy  
& D. Vilas, Advocates

For the Respondent:

M/s. D. Hanumanth Rao,  
S. Sobhan Reddy, B. Shyam  
Raju & Abdul Shafiq,  
Advocates

**COMMON AWARD**

In pursuance of the claim made by the Petitioner Union, the Indian Airports Kamgar Union represented by their Joint General Secretary (herein after be referred to as Petitioner union), the Government of India, Ministry of Labour by its orders (table given below) referred five industrial disputes under Sec. 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the same. The schedule of all these references is one and same, which reads as under:—

**SCHEDULE**

"Whether the action of the management of Airports Authority of India, Hyderabad in terminating the services of workmen, (name of the workman in each reference is mentioned respectively in each schedule) Ex-Sweepers *w.e.f.* 18.5.2002/18.9.2002, is legal and justified? If not, to what relief the workmen is entitled?"

The details of workmen as per the respective schedules pertaining to these five industrial disputes mentioned in cause title, are as under:—

S. No.	ID No.	Reference order No. & date	Name of the workmen S/Sri/Smt.	Date of Termination
1.	1/2005	L-11011/63/2004-IR(M) dt. 19.10.2004	A, Vasantha	18.5.2002
2.	2/2005	L-11011/68/2004-IR(M) dt. 19.10.2004	D. Nagaraju	18.9.2002
3.	8/2005	L-11011/33/2004-IR(M) dt. 27.5.2004	P. Savithri	18.5.2002
4.	38/2004	L-11011/12/2004-IR(M) dt. 27.2.2004	T. Bala Narasimha	18.9.2002
5.	40/2004	L-11011/10/2004-IR(M) dt. 27.2.2004	B. Venkatesh	18.9.2002

On receipt of the references this Tribunal has registered and numbered the five references (mentioned above) as I.D. Nos. 1/2005, 2/2005, 8/2005, 38/2004, and 40/2004, and issued notices to the management as well as to the workmen. For the workmen represented by the Petitioner union in all the above industrial disputes M/s. Ch. Indrasena Reddy & D. Vilas, Advocates have appeared as counsels and for the Respondent and M/s. D. Hanumanth Rao, S. Sobhan Reddy, B. Shyam Raju & Abdul Shafiq, Advocates have appeared as counsels.

2. The cause of action as well as facts pertaining to all these five industrial disputes are similar. Hence, by virtue

of the order dated 19.9.2005, this court has clubbed all these disputes in ID No. 1/2005. As such, a common award is being passed for all these disputes.

3. The workmen in all these industrial disputes have filed their respective claim statements with the averments which are similar in all respects and which are in brief as follows:—

Petitioner union is a Trade Union and is competent to espouse the cause of the workmen working under the Respondent. National Airports Authority Kamgar Union was registered on 27.2.1990, its name was changed as Airports Authority Kamgar Union consequent upon Airports Authority of India Act, 1994 came into force. Further, the Airports Authority Kamgar Union has now changed as Indian Airports Kamgar Union with the approval of the Registrar of Trade Unions *vide* letter No. 10(4950)/RTU/645 dated 30.4.2002. Airports Authority of India is a statutory corporation under Airports Authority of India Act, after merging International Airports Authority of India and National Airports Authority of India *w.e.f.* 1.4.1995 and the Airports Authority of India includes the establishments of Airport Director, Hyderabad Airport, Begumpet, Hyderabad. All the workmen in these cases are members of the Petitioner union and authorized to present their case before the conciliation officer. All the workmen have been working as sweepers since November, 1996 under various contractors and by office note No. AAI/HY/AD/G. 18/01 dated 1.5.2001 the Respondent has terminated the contractors thereby the workmen have been working under the direct control of Respondent on par with the regular employees of Respondent. Workmen were performing duties of permanent and perennial nature. Petitioner union represented several times for regularization of these workmen but in vain. Hence, WP No. 24460/1998 was filed which was allowed by the Hon'ble High Court of A.P., with a direction to the Respondent to regularize the services of the workmen within four weeks and further directed to pay them arrears from 1.8.1998. Aggrieved by the order of Hon'ble High Court, Respondent has filed WA No. 1011/2000 before Division Bench of High Court, who in turn set aside the orders of Single Judge directing the Petitioner union to approach the conciliation officer for regularization of their services within 30 days, with a further direction to maintain *status-quo*. In pursuance of the orders in writ appeal, Petitioner union has espoused the cause of the workmen before the Regional Labour Commissioner(C) on 17.5.2002 and they are pending. While so, all of a sudden the Respondent has orally terminated the services of the workmen *w.e.f.* 18.5.2002/18.9.2002 [the respective dates of termination of services of various workmen are incorporated in the table wherein the details of workmen are given in that statement]. Without assigning any reason, in violation of principles of natural

justice. Questioning the oral termination Petitioner union filed WP No. 9639 of 2002 and it is pending before the Hon'ble High Court. It is submitted that during pendency of the said writ petition, the conciliation officer has returned the application of Petitioner union *vide* order dated 9.9.2002. Then, Petitioner union again moved the Hon'ble High Court of A.P., Hyderabad by filing another WP No. 6544/2003 questioning the order dated 9-9-2002 of the conciliation officer and it was allowed setting aside the orders dated 9.9.2002 and directing the conciliation officer to take necessary steps for reference of the dispute raised by the Petitioner union *vide* order dated 17.6.2003. In pursuance of the orders dated 17.6.2003, conciliation officer admitted the matter into conciliation, since the Respondent has not settled the matter before the conciliation officer, he has sent a failure report to the Government hence, these references. With effect from 1.5.2001, the workmen have worked under the direct control of the Respondent on par with the regular employees consequent to the office note dated 1.5.2001 terminating the contractors. All these workmen have continuously worked for more than 5 years in a permanent vacancy, having worked for more than 240 days in a calendar year and they are entitled for regularization. As per the provisions of Industrial Employment (Standing Orders) Act, 1946, workmen have to be regularized after successful completion of 90 days of service. Petitioner union submits that instead of regularizing the services of the workmen the respondent has terminated the services of the workmen orally from 18.5.2002/18.9.2002 without following the provisions of Industrial Disputes Act, 1947 as such, the action taken by the Respondent against these workmen is illegal, unjust, contrary to law, contrary to the provisions of Industrial Disputes Act, 1947 in violation of principles of natural justice.

4. The Respondent in all these industrial disputes who is one and the same management, filed their counters in all these ten industrial disputes with one and the same averments which are in brief as follows:—

These references are not maintainable and are liable to be dismissed with exemplary costs as there is no *locus standi* to the workmen to raise these disputes. These references are illegal. There is suppression of true facts, and abuse of process of court. There is non-joinder of proper parties. The claim is speculative in nature. The workmen never worked with the Respondent. The Petitioner union is not a recognized union. The workmen could never be the members of the said union. There are contradictions between the pleadings of the workmen in WP No. 24660/1998 and that in the present disputes. Contractor who engaged the services of the workmen is not made party to these disputes. Respondent entrusted the upkeep and maintenance of the Airport to the contractors and it is the look out of the contractor to

engage labourers depending upon the intensity of the aircraft operations and passenger movement. The work will be supervised by the officers of the Respondent. There were no muster rolls maintained for the contract labour. The attendance register if any would be maintained by the contractors. The duty officers of the airport terminal have to check the work force engaged by the contractor to the required level of man power. The workmen were never under the direct control of the Respondent. The changing scenario of adopting advanced technologies and using machinery in regulating the work by using sophisticated equipments will not plea give raise to that supply is permanent feature of the employment in the airport. There is no relationship of employer and employee between the Respondent and the workmen, at any point of time, therefore, question of termination of services of the workmen does not arise. Any service rendered under a judicial order does not of itself invest a right within the workmen enabling the union to champion their cause. There is no industrial dispute what so ever that could be raised against the Respondent investing jurisdiction within this Tribunal. There is no meeting held by Petitioner union passing resolution authorizing the Petitioner to espouse the cause of the workmen before the conciliation officer. Even if there is no such resolution, there is no resolution to espouse the cause of the workmen before this Tribunal. Petitioner workmen are to be put to strict proof that the workmen worked for the Respondent under various contractors from 1997 and upto 1.5.2001 and thereafter directly under the Respondent on par with regular employees, as these are all incorrect contentions. The workmen were provided with work by virtue of the order in WP No. 24460/1998 which were extinguished by virtue of direction in WA 1011/2000. The references are liable to be dismissed in view of the pendency of the WP No. 9639/2002. The contention of the Petitioner union that the workmen herein come under the definition of workman under Sec. 2(s) and 2 (j) of the Industrial Disputes Act, 1947 and that they are entitled for notice, notice pay, retrenchment compensation and also assignment of reasons of termination are all incorrect. The other contention that respondent employed some other contract labour in the places of the present workmen and therefore, the action of the Respondent is arbitrary, colourable exercise of power and amounts to unfair labour practice is all incorrect. By efflux of time contract came to an end and thereafter fresh contracts were awarded. Petitions are liable to be dismissed with exemplary costs.

5. By virtue of order dated 10.4.2007, it is held that, considering the fact that I.D. Nos. 1/2005, 2/2005, 8/2005, 38/2004 and 40/2004 are all similar in nature and therefore, it is convenient to club these five industrial disputes with I.D. No. 1/2005.

6. To substantiate the contentions of the workmen, WW1 was examined and Exhibits W1 to W32 were marked. No evidence is adduced for the Respondent. But in a batch of other industrial disputes which pertain to the workmen who are similarly placed with the workmen herein, and in which Respondent is no other than the present Respondent [i.e., ID Nos. 93/2003 to 102/2003] Sri VLN Sastry, Asst. General Manager, Civil, of the Respondent has been examined as MW1. The facts and circumstances of both batches of cases are one and the same. Further, these matters are being taken up for disposal simultaneously. Therefore, in the interest of the cause of both parties, the said evidence will be taken notice of while deciding this batch of matters also as it is applicable to the facts of the present batch of cases also. By this no prejudice will be caused to either of the parties. On the other hand it is helpful to them both as the stand of the Respondent can also be taken into consideration.

7. Heard the arguments of either party.

8. The points that arise for determination are:

I. whether there is relationship of employee and employer between the workmen and Respondent?

II. Whether Respondent terminated the services of the workmen with effect from 18.5.2002/18.9.2002? If so, whether the said action on the part of the Respondent is justified?

III. To what relief the workmen are entitled to?

#### 9. Point No. 1:

The question whether there is relationship of employee and employer between the workmen and the respondent in these cases is a question of fact. In the case of Workmen of Nilgiri Coop. Mkt. Society Ltd., Vs. State of Tamilnadu and Others [(2004) 3 SCC 514], wherein it is held that the question whether workers are employees of principle employer or of contractor is a pure question of fact.

10. Therefore, from the facts gathered on record in these cases it is to be verified whether there is relationship of employee and employer between the workmen and the respondent.

11. It is an admitted fact that workmen herein have been contract labourers, and worked for the respondent under various contractors upto 1.5.2001, the date on which respondent has terminated the contractors, by office note No.AA1/HY/AD/G. 18/01. It is the contention of the Petitioner that there after workmen continued to work for the respondent directly under the control and supervision of the respondent officials, receiving payment from the respondent directly and therefore, there is employee and employer relationship between the workmen herein and the Respondent. Whereas, respondent, who is admitting that workmen have been working for the respondent even

after 1.5.2001 and until 18.5.2002/18.9.2002 is claiming that since the workmen's services were taken during that time by continuing them in service by virtue of court's orders, it can not be said that workmen have been in direct employment with the respondent or that there has been employee and employer relationship between workmen and respondent.

12. Now, it is to be verified whether workmen have been continued in service by virtue of any court order which was set aside later and if so, what is its effect? In this context it is to be noted that if there is no material on record to show that workmen have been continued in service with the respondent by virtue of any court order and as per the directions of the court which were set aside later, it is to be taken that Petitioner has been under the direct employment of the respondent during this period.

13. Sri VLN Sastry, Asst. Manager, Civil of the Respondent organization who has been examined as MW1 in ID Nos. 93/2003-102/2003 batch has admitted while he was under cross examination that from 1.5.2001 the contract system was terminated by the respondent, but he denied the truth of the suggestion put to him that since then all the workmen in these cases worked with the respondent directly and claimed that they worked under contractor only from 1.5.2001 to 18.5.2002/18.9.2002. He claimed that there is record to show the identity of the contractor under whom the workmen have worked for the period from 1.5.2001 to 18.5.2002/18.9.2002 and he can produce the same before the court. But no such record has been produced before the court. On the other hand the fact remains that it is not the pleading of the respondent that during this period also the workmen have worked under any contractor. Their claim has been that by virtue of some court order the workmen were continued in service during the said period. But, respondent has not produced any document to show that the services of the workmen were continued by virtue of any court order.

14. Whereas, while WW1 was under cross examination for the Management it is elicited from him that on abolition of Contractor system the workers were continued and they worked under the respondent from 1.5.2001 as per Ex.W3.

15. Ex.W3 is office note dated 1.5.2001 pertaining to the respondent. The subject therein is "Upkeep and maintenance of NTR and RG terminal at Hyderabad Airport" This document reads that "After the expiry of AMC contract, the upkeep and maintenance of both the terminals is being undertaken departmentally with effect from 1.5.2001. For this purpose, Sri Adarsh Kumar, Senior Manager (C) will be looking after the maintenance part New Delhi he will depute suitable engg. Officials for supervision and execution of engg. Works. Shri Sultan Moinuddin Manager(T) will be looking after the cleanliness and upkeep of the building. Thus, ATMs on duty in respective terminals assisted by HKS will depute the

workers on the job of upkeep and cleanliness and they will supervise their work. Shri VVK Murthy Asst. The General Manager (Stores) will make arrangements for supply of stores as required for the above work through SM(C)-II. In this connection, Shri R.P. Singh AGM(ATC) is appointed as the overall in charge to look after the arrangements for the above work in both the terminals. Shri Adarsh Kumar, SM(C)-II, Shri Sultan Moinuddin, Manager(T) and Shri VVK Murthy, Asst. The General Manager (stores) may coordinate with Shri R.P. Singh for any matter related to the above job."

16. The above referred contents of Ex.W3 are not giving out any information that by virtue of any direction from any court the services of the workmen in these cases were utilized by the respondent. On the other hand from this document what one can understand is that after abolition of the contractor system for upkeep and maintenance of NTR and RG terminal of Hyderabad Airport, respondent made arrangement for the said work by entrusting supervision of the work of the ATMs and workers who were on the job of upkeep and cleanliness, to various officials of this organization. Therefore, it can clearly be seen from Ex.W3 that respondents has directly taken up the work of upkeeping and maintenance of the NTR & RG Terminal at Hyderabad Airport and under their direct supervision the various workmen engaged for upkeep and maintenance of this place have worked. As already observed above, it is the very contention of the respondent, as can be seen from the facts elicited by them while WW1 was under cross examination, that the workmen herein worked under respondent from 1.5.2001 as per Ex.W3. Therefore, it can safely be held that the workmen in all these cases have worked directly for and under the supervision of the respondent from 1.5.2001 till the date of the termination of their services *i.e.*, 18.5.2002/18.9.2002 and further that their being continued in service subsequent to 1.5.2001 was not in pursuance of any court directions.

17. For coming to the above conclusion, the basis is, as already observed above, Ex.W3, the proceeding in pursuance of which, evidently the various workmen in these cases were continued in service even subsequent to 1.5.2001, does not reflect that in pursuance of any court order the workmen were continued in service. Further, there is no document made available on record to prove that the workmen have been continued in pursuance of any court order.

18. One another aspect to be noted is that, while WW1 was under cross examination, on one hand, it has been elicited from them that the workers were continued under the respondent from 1.5.2001 as per Ex.W3, on the other hand, it is suggested to him that workers never worked under the respondent from 1.5.2001 and that there is no relationship of worker and employer, which is denied by WW1. This shows, that the respondent is blowing hot and cold by taking contradictory claims before the court to



wriggle out of the obligations arose under the provisions of Industrial Disputes Act, 1947. But the fact established through the evidence on record is that subsequent to 1.5.2001, the date on which respondent abolished the contractor system, they continued to take the services of the various workmen who were working under the contractor till that date, for maintenance and upkeeping of the airport premises, by directly supervising their work, as specified in Ex.W3.

19. The contention of the Respondent that subsequent to 1.5.2001 the cleaning work was entrusted to some other contractors is totally contradicted to the context of Ex.W3. Further, no evidence is adduced on record by the Respondent to show that contractors were not engaged to attend to the cleaning work subsequent to 1.5.2001.

20. Respondent is making a reference to court order as the reason for continuing the various workmen in service subsequent to 1.5.2001. The details of the said court order are not revealed anywhere in the counter. For the first time while WW1 was under cross examination it is put to him that in view of the status quo order given by the Hon'ble High Court of A.P., in Writ appeal, respondent only paid wages without extracting work which is denied by WW1. From this suggestion what one has to understand is that it is the contention of the respondent that by virtue of the status quo order made by the Hon'ble High Court of A.P., in the judgement made in writ appeal the various workmen were continued in service. The said status quo order can be seen in Ex.W5, the copy of judgment in WA Nos. 865, 866 and 1011 of 2000 dated 18.4.2002 whereas the workmen herein continued in services of the Respondent even after abolition of Contractor system from 1.5.2001. In this judgment status quo was ordered to be maintained for one month from the date of said judgment. Evidently on the very date of expiry of said period *i.e.*, on 18.9.2002 services of all the workmen were terminated. There is no other previous order prescribing or directing the respondent to maintain status quo, regarding continuation of the workmen in service with effect from 1.5.2001.

21. In view of the fore gone discussion of the material on record, it can safely be held that, the material on record clearly discloses that respondent engaged the services of the various workmen in these cases directly, under the direct supervision of their officials since 1.5.2001 and therefore there is relationship of employee and employer between the Petitioner and the respondent since 1.5.2001 as correctly contended by the Petitioner.

This point is answered accordingly.

## 22. Point No.2:

It is an admitted fact that respondent terminated the services of the various workmen in these cases with effect from 18.5.2002/18.9.2002. As already observed above, after Ex. W5 judgement was rendered by Hon'ble High Court of

A.P., in WA Nos. 865, 866 & 1011/2001, in compliance of the direction there in *i.e.*, to maintain status quo for one month respondent continued the various workmen in service for one month and terminated their services on 18.5.2002/18.9.2002. Now, it is to be verified whether the said termination of services is legal, valid and justified.

23. As already concluded above, while deciding point No.1, there has been employee and employer relationship between the various workmen and the respondent. The workmen worked for the respondent directly and under their supervision from 1.5.2001 till 18.5.2002/18.9.2002 *i.e.*, for more than 240 days. In such case, if there is termination of service the same shall be in compliance of mandatory pre-requisites provided under Sec.25F of Industrial Disputes Act, 1947. Sec.25F of Industrial Disputes Act, 1947 reads as follows:—

"25-F: Conditions precedent to retrenchment of workmen:— No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette]."

24. Therefore, the workmen in these cases who worked for more than one year for the respondent *i.e.*, from 1.5.2001 till 18.5.2002/18.9.2002 can not be retrenched until they have been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice, for the period of notice. Further more, the workmen have to be paid retrenchment compensation as mentioned in Sec.25F (b) and also there shall be compliance of Sec. 25F(c). unless there is compliance of all the above mentioned mandatory pre-requisites the retrenchment of the workmen is to be held as null, void, illegal and inoperative and such termination of service of the workmen without complying the mandatory provisions contained under Sec.25F (a) and (b) should ordinarily result in their reinstatement as per the well established legal principles laid down by Hon'ble Apex Court.

25. In view of the fore gone discussion, it can safely be held that the termination of the various workmen in these cases from service by the respondent without complying the mandatory pre-requisites provided under Sec.25F of the Industrial Disputes Act, 1947 makes the said termination as illegal, unjust and invalid.

26. Learned Counsel for the respondent relied upon the principles laid down in the cases of Steel Authority of India Limited and another Vs. State of West Bengal and others [(2008) 14 SCC 589], but the principles laid down in this case are not helpful to the facts of the present case since, it is nobody's case that the dispute in this case became stale for any reason. Learned Counsel for the respondent further relied upon the principle laid down in the case of Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd., and another [(1979) 3 SCC 371], but the facts and circumstances cited in this case are totally different from that of the present case. The termination of services in the present case is not punitive in nature and there was no scope for domestic enquiry in the present cases unlike the cited case. Therefore, the various principles laid down in the cited case are not applicable to the facts of the present case.

27. As can be seen from the material on record, in Ex.W5, the judgement of the Hon'ble High Court of A.P., the various workmen and their union are at liberty to seek appropriate relief before the appropriate industrial courts in terms of the judgement of constitutional bench in Steel Authority of India's case. The workmen have approached the Regional Labour Commissioner(C) for espousing the cause of the various workmen by raising individual industrial disputes through Ex.W6 the application made by the workmen to the Conciliation Officer Regional Labour Commissioner(C) invoking Sec.2K of the Industrial Disputes Act, 1947 dated 17.5.2002. In respect of most of the workmen, from the very next date *i.e.*, on 18.5.2002 services of the various workmen were terminated by the respondent. Thus, it can clearly be seen that without even giving sufficient opportunity to the workmen to have their remedy and further without complying the mandatory prerequisites of Sec.25 F of the Industrial Disputes Act, 1947 respondent has terminated the services of the various workmen which is neither proper, nor justified nor legal.

This point is answered accordingly.

### 28. Point No. 3:

In view of the findings given in points No.1 and 2 above, the various workmen in these petitions whose services were illegally terminated by the respondent without even complying with the mandatory prerequisites provided for in Sec.25F of Industrial Disputes Act, 1947, are entitled for reinstatement into service with all back wages and other attendant benefits, in the light of the mandate given in various well established legal principles laid down by the Hon'ble the Apex Court.

This point is answered accordingly.

### 29. Result:

In the result, the Petitions are allowed and the schedules in all these industrial disputes are answered as follows:—

The action of the management of Airports Authority of India. Hyderabad in terminating the services of the workmen in I.D. Nos. 1/2005, 2/2005, 8/2005, 38/2004 and 40/2004, Ex. Sweepers, is neither legal nor justified and therefore the same is hereby set aside. All these workmen shall be reinstated into services of the Respondent as Sweepers forthwith. They all are entitled for back wages from their respective date of termination *i.e.*, 18.5.2002/18.9.2002 till the date of their respective reinstatement into service and also all other attendant benefits. All the arrears of back wages shall be paid to these workmen by the Respondent forth with.

Award passed accordingly. Transmit.

Typed to my dictation by Smt P. Phani Gowri, Personal Assistant corrected by me on this the 13th day of September, 2013.

M. VIJAYALAKSHMI, Presiding Officer

### Appendix of evidence in all the 5 cases mentioned in cause title

Witnesses examined for the Petitioners/workmen	Witnesses examined for the Respondent
WW1: Sri G. A. Rudrappa	MWI: NIL

### Documents marked for the Petitioners/workmen

Ex.W1:	Photostat copy of certificate of registration of Trade union and constitution dt.27.2.1990
Ex.W2:	Photostat copy of espousal resolution dt.16.12.2003
Ex.W3:	Photostat copy of office note of the Respondent dt. 1.5.2001
Ex.W4:	Photostat copy of orders in WP 24460/98 dt.1.8.2000
Ex.W5:	Photostat copy of orders in WA 865, 866 & 1011/ 2000 dt.18.4.2002
Ex.W6:	Photostat copy of application to conciliation officer dt.17.5.2002
Ex.W7:	Photostat copy of report of conciliation officer dt.9.9.2002
Ex.W8:	Photostat copy of orders in WP No.6544/2003 dt. 17.7.2003
Ex.W9:	Photostat copy of order of reference of G.O.I, dt.12.12.2003
Ex.W10:	Photostat copy of CLC(C) instruction No.1/1998 dt.1.7.1998

Ex.W11: Photostat copy of representation of the union to the management dt.16.12.2002

Ex.W12: Photostat copies of bunch of identity cards issued the workmen

Ex.W13: Photostat copy of statement showing details of workers engaged as sweepers in Airports Authority of India with contractors

Ex.W14: Photostat copy of charter of demands submitted by Petitioner union to the Respondent.

Ex.W15: Photostat copy of Memorandum of Settlement dt.19.2.97

Ex.W16: Photostat copy of letter Lr.No.A-60011/1/97 PP addressed by the management to the G.S. dt.28.4.1997

Ex.W17: Photostat copy of representation dt.13.3.97 to the chairman of Respondent organization, for regularization of these workmen

Ex.W18: Photostat copy of representation dt.27.5.97 to the chairman of Respondent organization, for regularization of these workmen and payment of salary on the principle of equal pay for equal work

Ex.W19: Photostat copy of representation to the chairman of Respondent organization, with request not to violate CL(R&A) Act

Ex.W20: Photostat copy of list of workmen in this case and the names of contractors with wages paid, submitted before Hon'ble High Court in WP No.24460/98

Ex.W21: Photostat copy of plaper clipping of National Daily dated 3.3.1999

Ex.W22: Photostat copy of petition dt.16.3.2000 u/s 2(k) of ID Act before Regional Labour Commissioner(C)

Ex.W23: Photostat copy of office memo dt.20.4.2000 of Ministry of Labour and Employment along with enclosures.

Ex.W24: Photostat copy of Lr. dt.7.7.2000 to Regional Labour Commissioner(C) by Petitioner union

Ex.W25: Photostat copy of Lr. dt.30.11.2000 from O/o Regional Labour Commissioner(C) to the Respondent

Ex.W26: Photostat copy of charter of demands submitted to AAI management by the union dt.7.2.2000

Ex.W27: Photostat copy of grievance submitted to Airport Director dt. 25.6.2000 by Petitioner union

Ex.W28: Photostat copy of Lr. from Respondent to the Petitioner union

Ex.W29: Photostat copy of Lr. from Petitioner union to the Ministry of Labour and Employment.

Ex.W30: Photostat copy of letter of the Petitioner union to the ALC© dt.27.6.2003

Ex.W31: Photostat copy of representation dt.29.7.2003 addressed to the National Commissioner for S.C. & ST by the Petitioner union

Ex.W32: Photostat copy of Lr. addressed by the Ministry of Labour and Employment to all the members of Central Advisory Contract Labour Board, recommending abolition of contract labour system in the Respondent organization.

Documents marked for the Respondent

NIL

नई दिल्ली, 8 जनवरी, 2014

**का०आ० 302.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअरपोर्ट अथॉरिटी ऑफ इंडिया, हैदराबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 30/2004 अन्य 75 औद्योगिक विवाद के साथ कुल 76 विवाद) को प्रकाशित करती है जो केन्द्रीय सरकार को 6/1/2014 को प्राप्त हुआ था।

[सं० एल-11011/27 to 36, 41 to 50, 53 to 58/2003 आई आर (एम),

सं० एल-11011/1 to 9, 11, 13 to 16, 20 to 32, 34, 36 to 49, 61, 62, 64 to 66, 67, 69 & 78/2004-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 8th January, 2014

**S.O. 302.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2004 wherein other 75 disputes are clubbed *i.e.* total 76 disputes) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India, Hyderabad and their workman, which was received by the Central Government on 6/1/2014.

[No. L-11011/27 to 36, 41 to 50, 53 to 58/2003-IR(M),  
No. L-11011/1 to 9, 11, 13 to 16, 20 to 32, 34, 36 to  
49, 61, 62, 64 to 66, 67, 69 & 78/2004-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT  
HYDERABAD****Present :** SMT. M. VIJAYA LAKSHMI,  
Presiding Officer

Dated the 13th day of September, 2013

**INDUSTRIAL DISPUTES Nos.**

1/2004, 2/2004, 3/2004, 4/2004, 5/2004, 6/2004, 7/2004, 8/2004,  
9/2004, 10/2004, 11/2004, 12/2004, 13/2004,  
14/2004, 15/2004, 16/2004, 17/2004, 18/2004, 19/2004, 20/  
2004, 30/2004, 31/2004, 32/2004, 33/2004, 34/2004, 35/2004,  
36/2004, 37/2004, 39/2004, 41/2004, 42/2004, 43/2004,  
44/2004, 45/2004, 46/2004, 47/2004, 48/2004, 49/2004,  
50/2004, 51/2004, 81/2004, 82/2004, 83/2004, 86/2004,  
87/2004, 88/2004, 89/2004, 103/2004, 104/2004, 105/2004,  
106/2004, 107/2004, 108/2004, 109/2004, 117/2004, 118/2004,  
119/2004, 120/2004, 121/2004, 122/2004, 123/2004, 143/2004,  
144/2004, 145/2004, 146/2004, 147/2004, 148/2004, 149/2004,  
25/2005, 26/2005, 27/2005, 28/2005, 29/2005, 30/2005, 31/2005,  
32/2005

**Between:**

The Jt. General Secretary  
Indian Airports Kamgar Union, C/o AAI,  
NAD, Begumpet,  
Hyderabad ....Petitioner(s)/Union  
AND

The Director,  
Airports Authority of India,  
Begumpet,  
Hyderabad—500016 ....Respondent

**APPEARANCES:**

For the Petitioner(s) Union: M/s. Ch. Indrasena Reddy &  
For the Respondent: D. Vilas, Advocates

1. M/s. M. Vijay Kumar & C.  
Chandra Mohan,  
Advocates for ID Nos.  
1-20/2004, 81-83/2004,  
86-89/2004, 103-109/  
2004, 117-123/2004
2. M/s. D. Hanumanth Rao,  
S. Sobhan Reddy & B.  
Shyam Raju, Advocates  
for ID Nos. 30-37/2004,  
39/2004, 41-51/2004, 143-  
149/2004, 25-32/2005

**COMMON AWARD**

In pursuance of the claim made by the Petitioner Union,  
the Indian Airports Kamgar Union represented by their

Joint General Secretary (herein after be referred to as  
Petitioner union), the Government of India, Ministry of  
Labour by its orders (table given below) referred seventy  
six industrial disputes under Sec.10(1)(d) of the I.D. Act,  
1947 requiring this forum to decide the same. The schedule  
of all these references is one and same, which reads as  
under:—

**SCHEDULE**

"Whether the action of the management of Airports  
Authority of India, Hyderabad in terminating the  
services of workmen, (name of the workman in each  
reference is mentioned respectively in each schedule)  
Ex-Sweepers *w.e.f.* 18.5.2002 /18.9.2002, is legal and  
justified? If not, to what relief the workman is entitled?"

The details of workmen as per the respective schedules  
pertaining to these seventy six industrial disputes  
mentioned in cause title, are as under:—

Sl. No	ID No.	Reference order No. & date	Name of the Workman S/Sri/Smt.	Date of termination
1.	1/2004	L-11011/27/2003-IR(M) dt.27.11.2003	A. Hari Babu	18.5.2002
2.	2/2004	L-11011/28/2003-IR(M) dt.27.11.2003	A. Radhika	18.5.2002
3.	3/2004	L-11011/29/2003-IR(M) dt.27.11.2003	Swarnalatha	18.5.2002
4.	4/2004	L-11011/30/2003-IR(M) dt.27.11.2003	M. Jyothi	18.5.2002
5.	5/2004	L-11011/31/2003-IR(M) dt.27.11.2003	M. Neelamma	18.5.2002
6.	6/2004	L-11011/32/2003-IR(M) dt.27.11.2003	G. Gurumurthy	18.5.2002
7.	7/2004	L-11011/33/2003-IR(M) dt.27.11.2003	G. Ramesh	18.5.2002
8.	8/2004	L-11011/34/2003-IR(M) dt.27.11.2003	K. Narender	18.5.2002
9.	9/2004	L-11011/35/2003-IR(M) dt.27.11.2003	N. Ramesh	18.5.2002
10.	10/2004	L-11011/36/2003-IR(M) dt.27.11.2003	G. Yadagiri	18.5.2002
11.	11/2004	L-11011/41/2003-IR(M) dt.12.12.2003	K. Padma	18.5.2002
12.	12/2004	L-11011/42/2003-IR(M) dt.12.12.2003	P. Revathi	18.5.2002



13.	13/2004	L-11011/43/2003- IR(M) dt.12.12.2003	K. Shoba	18.5.2002	33.	44/2004	L-11011/6/2004- IR(M) dt.25.2.2004	D.A. Raju	18.9.2002
14.	14/2004	L-11011/44/2003- IR(M) dt.12.12.2003	A. Chandrakala	18.5.2002	34.	45/2004	L-11011/5/2004- IR(M) dt.25.2.2004	D. Narasimha	18.9.2002
15.	15/2004	L-11011/45/2003- IR(M) dt.12.12.2003	Swaroopa Rani	18.5.2002	35.	46/2004	L-11011/4/2004- IR(M) dt.25.2.2004	S. Yellamma	18.9.2002
16.	16/2004	L-11011/46/2003- IR(M) dt.12.12.2003	D. Narasamma	18.5.2002	36.	47/2004	L-11011/3/2004- IR(M) dt.25.2.2004	M. Rajesh	18.9.2002
17.	17/2004	L-11011/47/2003- IR(M) dt.12.12.2003	A. Bhanulaxmi	18.5.2002	37.	48/2004	L-11011/2/2004- IR(M) dt.25.2.2004	M. Swamy	18.9.2002
18.	18/2004	L-11011/48/2003- IR(M) dt.12.12.2003	S. Sumithra	18.5.2002	38.	49/2004	L-11011/58/2003- IR(M) dt.23.2.2004	P.Yadamma	18.9.2002
19.	19/2004	L-11011/49/2003- IR(M) dt.12.12.2003	K. Suguna	18.5.2002	39.	50/2004	L-11011/1/2004- IR(M) dt.24.2.2004	K. Laxmi	18.9.2002
20.	20/2004	L-11011/50/2003- IR(M) dt.12.12.2003	A. Pushpa	18.5.2002	40.	51/2004	L-11011/57/2003- IR(M) dt.23.2.2004	E Yadamma	18.9.2002
21.	30/2004	L-11011/16/2004- IR(M) dt.27.2.2004	Nazeemunnisa	18.9.2002	41.	81/2004	L-11011/21/2004- IR(M) dt.8.6.2004	G. Shanker	18.5.2002
22.	31/2004	L-11011/56/2003- IR(M) dt.23.2.2004	J. Vijaya	18.9.2002	42.	82/2004	L-11011/20/2004- IR(M) dt.8.6.2004	A. Sakkubai	18.5.2002
23.	32/2004	L-11011/55/2003- IR(M) dt.23.2.2004	S. Vani	18.5.2002	43.	83/2004	L-11011/32/2004- IR(M) dt.27.5.2004	K. Suguna	18.9.2002
24.	33/2004	L-11011/54/2003- IR(M) dt.23.2.2004	B. Chandrakala	18.5.2002	44.	86/2004	L-11011/22/2004- IR(M) dt.9.6.2004	M. Suresh	18.5.2002
25.	34/2004	L-11011/53/2003- IR(M) dt.23.2.2004	S. Bharathibai	18.5.2002	45.	87/2004	L-11011/23/2004- IR(M) dt.10.6.2004	K. Anjaiah	18.9.2002
26.	35/2004	L-11011/15/2004- IR(M) dt.20.2.2004	P.Bhoolaxmi	18.9.2002	46.	88/2004	L-11011/24/2004- IR(M) dt.9.6.2004	L. Madhu	18.5.2002
27.	36/2004	L-11011/14/2004- IR(M) dt.27.2.2004	L. Venkatamma	18.9.2002	47.	89/2004	L-11011/25/2004- IR(M) dt.9.6.2004	A.M. Venkatesh	18.9.2002
28.	37/2004	L-11011/13/2004- IR(M) dt.27.2.2004	U. Pentamma	18.9.2002	48.	103/2004	L-11011/43/2004- IR(M) dt.13.9.2004	G. Ramesh	18.9.2002
29.	39/2004	L-11011/11/2004- IR(M) dt.27.2.2004	P. Prakash	18.9.2002	49.	104/2004	L-11011/44/2004- IR(M) dt.13.9.2004	M. Lalitha	18.9.2002
30.	41/2004	L-11011/9/2004- IR(M) dt.27.2.2004	K. Yellaraju	18.9.2002	50.	105/2004	L-11011/45/2004- IR(M) dt.13.9.2004	M. Ramesh	18.5.2002
31.	42/2004	L-11011/8/2004- IR(M) dt.25.2.2004	G. Shaker	18.9.2002	51.	106/2004	L-11011/46/2004- IR(M) dt.13.9.2004	K.Tirupathi	18.9.2002
32.	43/2004	L-11011/7/2004- IR(M) dt.25.2.2004	G. Chandrasekhar	18.9.2002	52.	107/2004	L-11011/47/2004- IR(M) dt.13.9.2004	K. Trupathi	18.9.2002

53. 108/2004	L-11011/48/2004- B. Gurucharnam IR(M) dt.13.9.2004	18.9.2002
54. 109/2004	L-11011/49/2004- P. Ravi IR(M) dt.13.9.2004	18.9.2002
55. 117/2004	L-11011/36/2004- Unnatasana IR(M) dt.28.9.2004	18.9.2002
56. 118/2004	L-11011/37/2004- Rehman Begum IR(M) dt.28.9.2004	18.5.2002
57. 119/2004	L-11011/38/2004- Mahaboobi IR(M) dt.28.9.2004	18.9.2002
58. 120/2004	L-11011/39/2004- Hemalatha IR(M) dt.28.9.2004	18.5.2002
59. 121/2004	L-11011/40/2004- K. Shashikala dt.28.9.2004	18.5.2002
60. 122/2004	L-11011/41/2004- Andalamma IR(M) dt.28.9.2004	18.9.2002
61. 123/2004	L-11011/42/2004- K. Suresh IR(M) dt.28.9.2004	18.9.2002
62. 143/2004	L-11011/26/2004- P. Rajashree IR(M) dt.27.5.2004	18.5.2002
63. 144/2004	L-11011/27/2004- A. Durgabai IR(M) dt.27.5.2004	18.5.2002
64. 145/2004	L-11011/28/2004- M. Shyamala IR(M) dt.27.5.2004	18.9.2002
65. 146/2004	L-11011/29/2004- E. Padma IR(M) dt.27.5.2004	18.9.2002
66. 147/2004	L-11011/30/2004- M. Yadamma IR(M) dt.27.5.2004	18.9.2002
67. 148/2004	L-11011/31/2004- M. Nageswara IR(M) Rao dt.27.5.2004	18.5.2002
68. 149/2004	L-11011/34/2004- M. Bhagyalaxmi IR(M) dt.27.5.2004	18.5.2002
69. 25/2005	L-11011/61/2004- M. Malesh IR(M) dt.19.10.2004	18.9.2002
70. 26/2005	L-11011/62/2004- P. Naresh IR(M) dt.19.10.2004	18.9.2002
71. 27/2005	L-11011/64/2004- K. Raju IR(M) dt.19.10.2004	18.5.2002
72. 28/2005	L-11011/65/2004- Yellubai IR(M) dt.19.10.2004	18.5.2002
73. 29/2005	L-11011/66/2004- N. Krishna IR(M) Kumari dt.19.10.2004	18.5.2002

74. 30/2005	L-11011/67/2004- M. Kantha IR(M) dt.19.10.2004	18.9.2002
75. 31/2005	L-11011/69/2004- M. Ramaswamy IR(M) 0.19.10.2004	18.9.2002
76. 32/2005	L-11011/78/2004- K. Swamy Raju IR(M) dt.18.1.2005	18.5.2002

On receipt of the references, this Tribunal has registered and numbered the 76 references (mentioned above) as I.D. Nos. 1/2004 to 20/2004, 30/2004 to 37/2004, 39/2004, 41/2004 to 51/2004, 81/2004 to 83/2004, 86/2004 to 89/2004, 103/2004 to 109/2004, 117/2004 to 123/2004, 143/2004 to 149/2004, 25/2005 to 32/2005 and issued notices to the management as well as to the workmen. For the workmen represented by the Petitioner union in all the above industrial disputes M/s. Ch. Indrasena Reddy & D. Vilas, Advocates appeared as counsels and for the Respondent, M/s. M. Vijay Kumar & C. Chandra Mohan, appeared as counsels in ID Nos. 1-20/2004, 81-83/2004, 86-89/2004, 103-109/2004, 117-123/2004 and M/s. D. Hanumanth Rao, S. Sobhan Reddy & B. Shyam Raju, appeared as counsels in ID Nos. 30-37/2004, 39/2004, 41-51/2004, 143-149/2004, 25-32/2005.

2. The cause of action as well as facts pertaining to all these seventy six industrial disputes are similar. Hence, by virtue of the order dated 19.9.2005, this court has clubbed all these disputes in ID No.30/2004 and further proceedings from that date were taken up and recorded in ID No. 30/2004. As such, a common award is being passed for all these disputes.

3. The workmen in all these industrial disputes have filed their respective claim statements with the averments which are similar in all respects and which are in brief as follows:—

Petitioner union is a Trade Union and is competent to espouse the cause of the workmen working under the Respondent. National Airports Authority Kamgar Union was registered on 27.2.1990, its name was changed as Airports Authority Kamgar Union consequent upon Airports Authority of India Act, 1994 came into force. Further, the Airports Authority Kamgar Union has now changed as Indian Airports Kamgar Union with the approval of the Registrar of Trade Unions *vide* letter No.10(4950)/RTU/645 dated 30.4.2002. Airports Authority of India is a statutory corporation under Airports Authority of India Act, after merging International Airports Authority of India and National Airports Authority of India *w.e.f.* 1.4.1995 and the Airports Authority of India includes the establishments of Airport Director, Hyderabad Airport, Begumpet, Hyderabad. All the workmen in these cases are members of the Petitioner union and authorized to present their case before the conciliation officer. All the workmen have been working as sweepers since November, 1996 under various

contractors and by office note No.AAI/HY/AD/G.18/01 dated 1.5.2001 the Respondent has terminated the contractors thereby the workmen have been working under the direct control of Respondent on par with the regular employees of Respondent. Workmen were performing duties of permanent and perennial nature. Petitioner union represented several times for regularization of these workmen but in vain. Hence, WP No.24460/1998 was filed which was allowed by the Hon'ble High Court of A.P., with a direction to the Respondent to regularize the services of the workmen within four weeks and further directed to pay them arrears from 1.8.1998. Aggrieved by the order of Hon'ble High Court, Respondent has filed WA No.1011/2000 before Division Bench of High Court, who in turn set aside the orders of Single Judge directing the Petitioner union to approach the conciliation officer for regularization of their services within 30 days, with a further direction to maintain status-quo. In pursuance of the orders in writ appeal, Petitioner union has espoused the cause of the workmen before the Regional Labour Commissioner(C) on 17.5.2002 and they are pending. While so, all of a sudden the Respondent has orally terminated the services of the workmen *w.e.f.* 18.5.2002/18.9.2002 without assigning any reason, in violation of principles of natural justice [the respective dates of termination of services of various workmen are incorporated in the table wherein the details of workmen are given in that statement]. Questioning the oral termination Petitioner union filed WP No.9639 of 2002 and it is pending before the Hon'ble High Court. It is submitted that during pendency of the said writ petition, the conciliation officer has returned the application of Petitioner union *vide* order dated 9.9.2002. Then, Petitioner union again moved the Hon'ble High Court of A.P., Hyderabad by filing another WP No.6544/2003 questioning the order dated 9.9.2002 of the conciliation officer and it was allowed setting aside the orders dated 9.9.2002 and directing the conciliation officer to take necessary steps for reference of the dispute raised by the Petitioner union *vide* order dated 17.6.2003. In pursuance of the orders dated 17.6.2003, conciliation officer admitted the matter into conciliation, since the Respondent has not settled the matter before the conciliation officer, he has sent a failure report to the government hence, these references. With effect from 1.5.2001, the workmen have worked under the direct control of the Respondent on par with the regular employees consequent to the office note dated 1.5.2001 terminating the contractors. All these workmen have continuously worked for more than 5 years in a permanent vacancy, having worked for more than 240 days in a calendar year and they are entitled for regularization. As per the provisions of Industrial Employment (Standing Orders) Act, 1946, workmen have to be regularized after successful completion of 90 days of service. Petitioner union submits that instead of regularizing the services of the workmen the Respondent has terminated the services of the workmen orally from 18.5.2002/18.9.2002 without following the

provisions of Industrial Disputes Act, 1947 as such, the action taken by the Respondent against these workmen is illegal, unjust, contrary to law, contrary to the provisions of Industrial Disputes Act, 1947 in violation of principles of natural justice.

4. The Respondent in all these industrial disputes who is one and the same management, filed their counters in all these ten industrial disputes with one and the same averments which are in brief as follows:—

These references are not maintainable and are liable to be dismissed with exemplary costs as there is no locus standi to the workmen to raise these disputes. These references are illegal. There is suppression of true facts and abuse of process of court. There is non-joinder of proper parties. The claim is speculative in nature. The workmen never worked with the Respondent. The Petitioner union is not a recognized union. The workmen could never be the members of the said union. There are contradictions between the pleadings of the workmen in WP No.24660/1998 and that in the present disputes. Contractor who engaged the services of the workmen is not made party to these disputes. Respondent entrusted the upkeep and maintenance of the Airport to the contractors and it is the look out of the contractor to engage labourers depending upon the intensity of the aircraft operations and passenger movement. The work will be supervised by the officers of the Respondent. There were no muster rolls maintained for the contract labour. The attendance register if any would be maintained by the contractors. The duty officers of the airport terminal have to check the work force engaged by the contractor to the required level of man power. The workmen were never under the direct control of the Respondent. The changing scenario of adopting advanced technologies and using machinery in regulating the work by using sophisticated equipments will not plea give raise to that supply is a permanent feature of the employment in the airport. There is no relationship of employer and employee between the Respondent and the workmen, at any point of time, therefore, question of termination of services of the workmen does not arise. Any service rendered under a judicial order does not of itself invest a right within the workmen enabling the union to champion their cause. There is no industrial dispute what so ever that could be raised against the Respondent investing jurisdiction within this Tribunal. There is no meeting held by Petitioner union passing resolution authorizing the Petitioner to espouse the cause of the workmen before the conciliation officer. Even if there is no such resolution, there is no resolution to espouse the cause of the workmen before this Tribunal. Petitioner workmen are to be put to strict proof that the workmen worked for the Respondent under various contractors from 1997 and upto 1.5.2001 and thereafter directly under the Respondent on par with regular employees, as these are all incorrect contentions. The workmen were provided with work by virtue of the order in

WP No.24460/1998 which were extinguished by virtue of direction in WA 1011/2000. The references are liable to be, dismissed in view of the pendency of the WP No.9639/2002. The contention of the Petitioner union that the workmen herein come under the definition of workman under Sec.2(s) and 2 (j) of the Industrial Disputes Act, 1947 and that they are entitled for notice, notice pay, retrenchment compensation and also assignment of reasons of termination are all incorrect. The other contention that Respondent employed some other contract labour in the places of the present workmen and therefore, the action of the Respondent is arbitrary, colourable exercise of power and amounts to unfair labour practice is all incorrect. By efflux of time contract came to an end and thereafter fresh contracts were awarded. Petitions are liable to be dismissed with exemplary costs.

5. By virtue of order dated 19.9.2005, it is held that, considering the fact that I.D. Nos. 1/2004 to 20/2004, 30/2004 to 37/2004, 39/2004, 40/2004 to 51/2004, 81/2004 to 83/2004, 86/2004 to 89/2004, 103/2004 to 109/2004, 117/2004 to 123/2004, 143/2004 to 149/2004, 25/2005 to 32/2005 are all similar in nature and the evidence is common for all these disputes and therefore, it is convenient to club these seventy six industrial disputes with I.D. No. 30/2004 and common evidence is to be recorded in I.D. No. 30/2004.

6. Accordingly, Common evidence for all these cases has been recorded in I.D. No. 30/2004.

7. To substantiate the contentions of the workmen, WW1 was examined and Exhibits W1 to W32 were marked. No evidence is adduced for the Respondent. But in a batch of other industrial disputes which pertain to the workmen who are similarly placed with the workmen herein, and in which Respondent is no other than the present Respondent [*i.e.*, ID Nos. 93/2003 to 102/2003] Sri VLN Sastry, Asst. General Manager, Civil, of the Respondent has been examined as MW1. The facts and circumstances of both batches of cases are one and the same. Further, these matters are being taken up for disposal simultaneously. Therefore, in the interest of the cause of both parties, the said evidence will be taken notice of while deciding this batch of matters also as it is applicable to the facts of the present batch of cases also. By this no prejudice will be caused to either of the parties. On the other hand it is helpful to the stand of the Respondent can be taken into consideration.

8. Heard the arguments of either party.

#### **9. The points that arise for determination are:—**

- I. Whether there is relationship of employee and employer between the workmen and the Respondent?
- II. Whether Respondent terminated the services of the workmen with effect from. 18.9.2002? If so,

whether the said action on the part of the Respondent is justified?

#### **III. To what relief the workmen are entitled to?**

#### **10. Point No.1:**

The question whether there is relationship of employee and employer between the workmen and the respondent in these cases is a question of fact. In the case of Workmen of Nilgiri Coop. Mkt. Society Ltd., Vs. State of Tamilnadu and Others [(2004) 3 SCC 514], wherein it is held that the question whether workers are employees of principle employer or of contractor is a pure question of fact.

11. Therefore, from the facts gathered on record in these cases it is to be verified whether there is relationship of employee and employer between the workmen and the respondent.

12. It is an admitted fact that workmen herein have been contract labourers and worked for the respondent under various contractors upto 1.5.2001, the date on which respondent has terminated the contractors, by office note No. AA1/HY/AD/G. 18/01. It is the contention of the Petitioner that there after workmen continued to work for the respondent directly under the control and supervision of the respondent officials, receiving payment from the respondent directly and therefore, there is employee and employer relationship between the workmen herein and the Respondent. Whereas, respondent, who is admitting that workmen have been working for the respondent even after 1.5.2001 and until 18.5.2002/18.9.2002 is claiming that since the workmen's services were taken during that time by continuing them in service by virtue of court's orders, it can not be said that workmen have been in direct employment with the respondent or that there has been employee and employer relationship between workmen and respondent.

13. Now, it is to be verified whether workmen have been continued in service by virtue of any court order which was set aside later and if so, what is its effect? In this context it is to be noted that if there is no material on record to show that workmen have been continued in service with the respondent by virtue of any court order and as per the directions of the court which were set aside later, it is to be taken that Petitioner has been under the direct employment of the respondent during this period.

14. Sri VLN Sastry, Asst. Manager, Civil of the Respondent organization who has been examined as MW1 in ID Nos. 93/2003-102/2003 batch has admitted that while he was under cross examination that from 1.5.2001 the contract system was terminated by the respondent, but he denied the truth of the suggestion put to him that since then all the workmen in these cases worked with the respondent directly and claimed that they worked under contractor only from 1.5.2001 to 18.5.2002/18.9.2002. He



claimed that there is record to show the identity of the contractor under whom the workmen have worked for the period from 1.5.2001. to 18.5.2002/18.9.2002 and he can produce the same before the court. But no such record has been produced before the court. On the other hand the fact remains that it is not the pleading of the respondent that during this period also the workmen have worked under any contractor. Their claim has been that by virtue of some court order the workmen were continued in service during the said period. But, respondent has not produced any document to show that the services of the workmen were continued by virtue of any court order.

15. Whereas, while WW1 was under cross examination for the Management, it is elicited from him that on abolition of Contractor system the workers were continued and they worked under the respondent from 1.5.2001 as per Ex.W3.

16. Ex.W3 is office note dated 1.5.2001 pertaining to the respondent. The subject therein is "Upkeep and maintenance of NTR and RG terminal at Hyderabad Airport." This document reads that "After the expiry of AMC contract, the upkeep and maintenance of both the terminals is being undertaken departmentally with effect from 1.5.2001. For this purpose, Sri Adarsh Kumar, Senior Manager (C) will be looking after the maintenance part New Delhi he will depute suitable engg. Officials for supervision and execution of engg. Works. Shri Sultan Moinuddin Manager (T) will be looking after the cleanliness and upkeep of the building. Thus, ATMs on duty in respective terminals assisted by HKS will depute the workers on the job of upkeep and cleanliness and they will supervise their work. Shri VVK Murthy Asst. The General Manager (Stores) will make arrangements for supply of stores as required for the above work through SM(C)-II. In this connection, Shri R.P. Singh AGM(ATC) is appointed as the overall in charge to look after the arrangements for the above work in both the terminals. Shri Adarsh Kumar, SM(C)-II, Shri Sultan Moinuddin, Manager (T) and Shri VVK Murthy, Asst. The General Manager (Stores) may coordinate with Shri R.P. Singh for any matter related to the above job."

17. The above referred contents of Ex.W3 are not giving out any information that by virtue of any direction from any court the services of the workmen in these cases were utilized by the respondent. On the other hand from this document what one can understand is that after abolition of the contractor system for upkeep and maintenance of NTR and RG terminal of Hyderabad Airport, respondent made arrangement for the said work by entrusting supervision of the work of the ATMs and workers who were on the job of upkeep and cleanliness, to various officials of this organization. Therefore, it can clearly be seen from Ex.W3 that respondents has directly taken up the work of upkeeping and maintenance of the NTR & RG Terminal at Hyderabad Airport and under their direct supervision the various workmen engaged for upkeep and

maintenance of this place have worked. As already observed above, it is the very contention of the respondent, as can be seen from the facts elicited by them while WW1 was' under cross examination, that the workmen herein worked under respondent from 1.5.2001 as per Ex.W3. Therefore, it can safely be held that the workmen in all these cases have worked directly for and under the supervision of the respondent from 1.5.2001 till the date of the termination of their services *i.e.*, 18.5.2002/18.9.2002 and further that their being continued in service subsequent to 1.5.2001 was not in pursuance of any court directions.

18. For coming to the above conclusion, the basis is, as already observed above, Ex.W3, the proceeding in pursuance of which, evidently the various workmen in these cases were continued in service even subsequent to 1.5.2001, does not reflect that in pursuance of any court order the workmen were continued in service. Further, there is no document made available on record to prove that the workmen have been continued in pursuance of any court order.

19. One another aspect to be noted is that, while WW1 was under cross examination, on one hand, it has been elicited from them that the workers were continued under the respondent from 1.5.2001 as per Ex.W3, on the other hand, it is suggested to him that workers never worked under the respondent from 1.5.2001 and that there is no relationship of worker and employer, which is denied by WW1. This shows, that the respondent is blowing hot and cold by taking contradictory claims before the court to wriggle out of the obligations arose under the provisions of Industrial Disputes Act, 1947. But the fact established through the evidence on record is that subsequent to 1.5.2001, the date on which respondent abolished the contractor system, they continued to take the services of the various workmen who were working under the contractor till that date, for maintenance and upkeeping of the airport premises, by directly supervising their work, as specified in Ex.W3.

20. The contention of the Respondent that subsequent to 1.5.2001 the cleaning work was entrusted to some other contractors is totally contradicted to the context of Ex.W3. Further, no evidence is adduced on record by the Respondent to show that any contractors were engaged to attend to the cleaning work subsequent to 1.5.2001. Therefore, the said contention can not be accepted as true and correct contention.

21. Respondent is making a reference to court order as the reason for continuing the various workmen in service subsequent to 1.5.2001. The details of the said court order are not revealed any where in the counter. For the first time while WW1 was under cross examination it is put to him that in view of the status quo order given by the Hon'ble High Court of A.P., in Writ appeal, respondent only paid

wages without extracting work which is denied by WW1. From this suggestion what one has to understand is that it is the contention of the respondent that by virtue of the status quo order made by the Hon'ble High Court of A.P., in the judgement made in writ appeal the various workmen were continued in service. The said status quo order can be seen in Ex.W5, the copy of judgment in WA Nos. 865, 866 and 1011 of 2000 dated 18.4.2002 whereas the workmen herein continued in services of the Respondent even after abolition of Contractor system from 1.5.2001. In this judgment status quo was ordered to be maintained for one month from the date of said judgment. Evidently on the very date of expiry of said period *i.e.*, on 18.5.2002/18.9.2002 services of all the workmen were terminated. There is no other previous order prescribing or directing the respondent to maintain status quo, regarding continuation of the workmen in service with effect from 1.5.2001.

22. In view of the fore gone discussion of the material on record, it can safely be held that, the material on record clearly discloses that respondent engaged the services of the various workmen in these cases directly, under the direct supervision of their officials since 1.5.2001 and therefore there is relationship of employee and employer between the Petitioner and the respondent since 1.5.2001 as correctly contended by the Petitioner.

This point is answered accordingly.

### 23. Point No. 2:

It is an admitted fact that respondent terminated the services of the various workmen in these cases with effect from 18.5.2002/18.9.2002. As already observed above, after Ex.W5 judgement was rendered by Hon'ble High Court of A.P., in WA Nos. 865, 866 & 1011/2001, in compliance of the direction there in *i.e.*, to maintain status quo for one month respondent continued the various workmen in service for one month and terminated their services on 18.5.2002/18.9.2002. Now, it is to be verified whether the said termination of services is legal, valid and justified.

24. As already concluded above, while deciding point No.1, there has been employee and employer relationship between the various workmen and the respondent. The workmen worked for the respondent directly and under their supervision from 1.5.2001 till 18.5.2002/18.9.2002 *i.e.*, for more than 240 days. In such case, if there is termination of service the same shall be in compliance of mandatory pre-requisites provided under Sec.25-F of Industrial Disputes Act, 1947. Sec.25-F of Industrial Disputes Act, 1947 reads as follows:—

"25-F: Conditions precedent to retrenchment of workmen:— No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment

and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by Notification in the Official Gazette]."

25. Therefore, the workmen in these cases who worked for more than one year for the respondent *i.e.*, from 1.5.2001 till 18.5.2002/18.9.2002 can not be retrenched until they have been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice, for the period of notice. Further more, the workmen have to be paid retrenchment compensation as mentioned in Sec.25F (b) and also there shall be compliance of Sec. 25F(c). unless there is compliance of all the above mentioned mandatory pre-requisites the retrenchment of the workmen is to be held as null, void, illegal and inoperative and such termination of service of the workmen without complying the mandatory provisions contained under Sec.25F (a) and (b) should ordinarily result in their reinstatement as per the well established legal principles laid down by Hon'ble Apex Court.

26. In view of the fore gone discussion, it can safely be held that the termination of the various workmen in these cases from service by the respondent without complying the mandatory pre-requisites provided under Sec.25F of the Industrial Disputes Act, 1947 makes the said termination as illegal, unjust and invalid.

27. Learned Counsel for the respondent relied upon the principles laid down in the cases of Steel Authority of India Limited and another Vs. State of West Bengal and others [(2008) 14 SCC 589], but the principles laid down in this case are not helpful to the facts of the present case since, it is nobody's case that the dispute in this case became stale for any reason. Learned Counsel for the respondent further relied upon the principle laid down in the case of Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd., and another [(1979) 3 SCC 371], but the facts and circumstances cited in this case are totally different from that of the present case. The termination of services in the present case is not punitive in nature and there was no scope for domestic enquiry in the present cases unlike the cited case. Therefore, the various principles laid down in the cited case are not applicable to the facts of the present case.

28. As can be seen from the material on record, in Ex.W5, the judgement of the Hon'ble High Court of A.P., the various workmen and their union are at liberty to seek appropriate relief before the appropriate industrial courts in terms of the judgement of constitutional bench in Steel Authority of India's case. The workmen have approached the Regional Labour Commissioner(C) for espousing the cause of the various workmen by raising individual industrial disputes through Ex.W6 the application made by the workmen to the Conciliation Officer. Regional Labour Commissioner(C) invoking Sec.2K of the Industrial Disputes Act, 1947 dated 17.5.2002. In respect of most of the workmen, from the very next date *i.e.*, on 18.5.2002 their services were terminated by the respondent. Thus, it can clearly be seen that without even giving sufficient opportunity to the workmen to have their remedy and further without complying the mandatory prerequisites of Sec.25 F of the Industrial Disputes Act, 1947 respondent has terminated the services of the various workmen which is neither proper, nor justified nor legal.

This point is answered accordingly.

### 29. Point No. 3:

In view of the findings given in points No.1 and 2 above, the various workmen in these petitions whose services were illegally terminated by the respondent without even complying with the mandatory prerequisites provided for in Sec.25F of Industrial Disputes Act, 1947, are entitled for reinstatement into service with all back wages and other attendant benefits, in the light of the mandate given in various well established legal principles laid down by the Hon'ble the apex court.

This point is answered accordingly.

### 30. Result:

In the result, the Petitions are allowed and the schedules in all these industrial disputes are answered as follows:—

The action of the management of Airports Authority of India, Hyderabad in terminating the services of the workmen in I.I.D. Nos.1/2004 to 20/2004, 30/2004 to 37/2004, 39/2004, 41/2004 to 51/2004, 81/2004 to 83/2004, 86/2004 to 89/2004, 103/2004 to 109/2004, 117/2004 to 123/2004, 143/2004 to 149/2004, 25/2005 to 32/2005, Ex. Sweepers, is neither legal nor justified and therefore the same is hereby set aside. All these workmen shall be reinstated into services of the Respondent as Sweepers forthwith. They all are entitled for back wages from their respective date of termination *i.e.*, 18.5.2002/18.9.2002 [as mentioned in the table supra] till the date of their respective reinstatement into service and also all other attendant benefits. All the arrears of back wages shall be paid to these workmen by the Respondent forth with.

Award passed accordingly Transmit.

M. VIJAYALAKSHMI, Presiding Officer

### Appendix of evidence in all the 76 cases mentioned in cause title

Witnesses examined for the Petitioners/workmen	Witnesses examined for the Respondent
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WW1: Sri G. A. Rudrappa	MW1: NIL
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### Documents marked for the Petitioner Union/workmen

Ex.W 1:	Photostat copy of certificate of registration of Trade union and constitution dt.27.2.1990
Ex.W 2:	Photostat copy of espousal resolution dt.16.12.2003
Ex.W 3:	Photostat copy of office note of the Respondent dt. 1.5.2001
Ex.W 4:	Photostat copy of orders in WP 24460/98 dt.1.8.2000
Ex.W 5:	Photostat copy of orders in WA 865, 866 & 1011/2000 dt.18.4.2002
Ex.W 6:	Photostat copy of application to conciliation officer dt. 17.5.2002
Ex.W 7:	Photostat copy of report of conciliation officer dt.9.9.2002
Ex.W 8:	Photostat copy of orders in WP No.6544/2003 dt. 17.7.2003
Ex.W 9:	Photostat copy of order of reference of G.O.I, dt. 12.12.2003
Ex.W 10:	Photostat copy of CLC(C) instruction No.1/1998 dt.1.7.1998
Ex.W 11:	Photostat copy of representation of the union to the management dt.16.12.2002
Ex.W 12:	Photostat copies of bunch of identity cards issued the workmen
Ex.W 13:	Photostat copy of statement showing details of workers engaged as sweepers in Airports Authority of India with contractors
Ex.W 14:	Photostat copy of charter of demands submitted by Petitioner union to the Respondent
Ex.W 15:	Photostat copy of Memorandum of Settlement dt.19.2.97
Ex.W 16:	Photostat copy of lr. dt. 28.4.97 from management to the Petitioner union
Ex.W 17:	Photostat copy of representation to the Hon'ble Minister of Tourism
Ex.W 18:	Photostat copy of representation dt.27.5.97 to the chairman of Respondent organization, for regularization of these workmen and payment

of salary on the principle of equal pay for equal work

- Ex.W 19: Photostat copy of representation to the chairman of Respondent organization, with request not to violate CL(R&A) Act
- Ex.W 20: Photostat copy of list of workmen in this case and the names of contractors with wages paid, submitted before Hon'ble High Court in WP No.24460/98
- Ex.W 21: Photostat copy of paper clipping of national daily dt.3.3.1999
- Ex.W 22: Photostat copy of petition dt.16.3.2000 u/s 2(k) of ID Act before Regional Labour Commissioner(C)
- Ex.W 23: Photostat copy of office memo dt.20.4.2000 of Ministry of Labour and Employment along with enclosures.
- Ex.W 24: Photostat copy of representation to ALC(C) by Petitioner union dt.Nil.
- Ex.W 25: Photostat copy of Ir. dt.30.11.2000 from O/o Regional Provident Commissioner's office
- Ex.W 26: Photostat copy of charter of demands submitted to AAI management by the union dt 7 2.2000
- Ex.W 27: Photostat copy of grievance submitted to Airport Director dt. 25.6.2001 by Petitioner union
- Ex.W 28: Photostat copy of Ir. from Petitioner union N.AAI/NAD/HYD/GN-10/ENGG(C)/348/5346/48 dt.18/19.4.2001
- Ex.W 29: Photostat copy of Ir. from Petitioner union to the Ministry of Labour and Employment.
- Ex.W 30: Photostat copy of letter of the Petitioner union to the ALC(C) dt. 27.6.2003
- Ex.W 31: Photostat copy of representation dt.29.7.2003 addressed to the National Commissioner for S.C. & ST by the Petitioner union
- Ex.W 32: Photostat copy of Ir. addressed by the Ministry of Labour and Employment to all the members of Central Advisory Contract Labour Board, recommending abolition of contract labour system in the Respondent organization.

Documents marked for the Respondent

NIL

नई दिल्ली, 8 जनवरी, 2014

का०आ० 303.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअरपोर्ट अथॉरिटी

ऑफ इंडिया, हैदराबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 93, 94, 95, 96, 97, 98, 99, 100, 101 एवं 102 वर्ष 2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 6.1.2014 को प्राप्त हुआ था।

[सं० एल-11011/16, 17, 18, 19, 20, 21, 22, 23, 24 & 25/2003-आई आर (एम)]  
जोहन तोपनो, अवर सचिव

New Delhi, the 8th January, 2014

**S.O. 303.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. Nos. 93, 94, 95, 96, 97, 98, 99, 100, 101 and 102 of 2003) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India, Hyderabad and their workman, which was received by the Central Government on 6.1.2014.

[No. L-11011/16, 17, 18, 19, 20, 21, 22, 23, 24 & 25/2003-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present:** SMT. M. VIJAYA LAKSHMI,  
Presiding Officer

Dated the 13th day of September, 2013

#### INDUSTRIAL DISPUTES No.

**93/2003, 94/2003, 95/2003, 96/2003, 97/2003,  
98/2003, 99/2003, 100/2003, 101/2003 and 102/2003**

Between:

#### 1. ID No.93/2003

The Jt. General Secretary  
Indian Airports Kamgar Union, C/o AAI,  
NA D, Begumpet,  
Hyderabad

....Petitioner(s)/Union

AND

The Director,  
Airports Authority of India,  
Begumpet,  
Hyderabad — 500016

....Respondent



**2. ID No.94/2003**

The Jt. General Secretary  
Indian Airports Kamgar Union, C/o AAI,  
NAD, Begumpet,  
Hyderabad. ....Petitioner(s)/Union

AND

The Director,  
Airports Authority of India,  
Begumpet,  
Hyderabad —500016.

**3. ID No.95/2003**

The Jt. General Secretary  
Indian Airports Kamgar Union, C/o AAI,  
NAD, Begumpet,  
Hyderabad. ....Petitioner(s)/Union

AND

The Director,  
Airports Authority of India,  
Begumpet,  
Hyderabad — 500016. ....Respondent

**4. ID No.96/2003**

The Jt. General Secretary  
Indian Airports Kamgar Union, C/o AAI,  
NAD, Begumpet,  
Hyderabad. ....Petitioner(s)/Union

AND

The Director,  
Airports Authority of India,  
Begumpet,  
Hyderabad —500016. ....Respondent

**5. ID No.97/2003**

The Jt. General Secretary  
Indian Airports Kamgar Union, C/o AAI,  
NAD, Begumpet,  
Hyderabad. ....Petitioner(s) Union

AND

The Director,  
Airports Authority of India, Begumpet,  
Hyderabad —500016. ....Respondent

**6. ID No.98/2003**

The Jt. General Secretary  
Indian Airports Kamgar Union, C/o AAI,  
NAD, Begumpet,  
Hyderabad. ....Petitioner(s)/Union

AND

The Director,  
Airports Authority of India,  
Begumpet,  
Hyderabad —500016. ....Respondent

**7. ID No. 99/2003**

The Jt. General Secretary  
Indian Airports Kamgar Union, C/o AAI,  
NAD, Begumpet,  
Hyderabad. ....Petitioner(s)/Union

AND

The Director,  
Airports Authority of India,  
Begumpet,  
Hyderabad —500016. ....Respondent

**8. ID No.100/2003**

The Jt. General Secretary  
Indian Airports Kamgar Union, C/o AAI,  
NAD, Begumpet,  
Hyderabad. ....Petitioner(s)/Union

AND

The Director,  
Airports Authority of India,  
Begumpet,  
Hyderabad —500016. ....Respondent

**9. ID No.101/2003**

The Jt. General Secretary  
Indian Airports Kamgar Union, C/o AAI,  
NAD, Begumpet,  
Hyderabad. ....Petitioner(s)/Union

AND

The Director,  
Airports Authority of India,  
Begumpet,  
Hyderabad —500016. ....Respondent

**10. ID No.102/2003**

The Jt. General Secretary  
Indian Airports Kamgar Union, C/o AAI,  
NAD, Begumpet,  
Hyderabad. ....Petitioner(s)/Union

AND

The Director,  
Airports Authority of India,  
Begumpet,  
Hyderabad —500016. ....Respondent

**Appearances:**

For the Petitioner(s) Union: M/s. Ch. Indrasena Reddy  
& D. Vilas, Advocates

For the Respondent: M/s. A.K. Jaya Prakash Rao,  
K. Srinivas Rao, P. Sudha,  
T. Bal Reddy, M. Govind &  
K. Ajay Kumar, Advocates

**COMMON AWARD**

In pursuance of the claim made by the Petitioner Union,  
the Indian Airports Kamgar Union represented by their  
date 6.11.2003 referred ten industrial disputes and Joint

General Secretary (herein after be referred to as Petitioner union) the Government of India, Ministry of Labour by its Orders No. L-11011/16/2003-IR(M) to L-11011/25/2003-IR(M) dateer section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the same. The schedule of all these references is one and same, which reads as under:—

#### SCHEDULE

"Whether the action of the management of Airports Authority of India, Hyderabad in terminating the services of workmen, (name of the workman in each reference is mentioned respectively in each schedule) Ex-Sweepers *w.e.f.* 18.5.2002, is legal and justified? If not, to what relief the workman is entitled?"

The details of workmen as per the respective schedules pertaining to these ten industrial disputes mentioned in cause title, are as under:—

Sl. No.	ID No.	Reference order No. & date	Name of the Workman S/Sri/Smt.	Date of termination
1.	93/2003	L-11011/16/2003-IR(M) dt.6.11.2003	M. Mallaiah	18.5.2002
2.	94/2003	L-11011/17/2003-IR(M) dt.6.11.2003	G. Sadanand	18.5.2002
3.	95/2003	L-11011/18/2003-IR(M) dt.6.11.2003	B. Chandraiah	18.5.2002
4.	96/2003	L-11011/19/2003-IR(M) dt.6.11.2003	P. Narender	18.5.2002
5.	97/2003	L-11011/20/2003-IR(M) dt.6.11.2003	G. Gattamma	18.5.2002
6.	98/2003	L-11011/21/2003-IR(M) dt.6.11.2003	G. Padmavathi	18.5.2002
7.	99/2003	L-11011/22/2003-IR(M) dt.6.11.2003	P. Narsing Rao	18.5.2002
8.	100/2003	L-11011/23/2003-IR(M) dt.6.11.2003	M. Yellaiah	18.5.2002
9.	101/2003	L-11011/24/2003-IR(M) dt.6.11.2003	G.N. Yadagiri	18.5.2002
10.	102/2003	L-11011/25/2003-IR(M) dt.6.11.2003	T. Subbaratnamma	18.5.2002

On receipt of the references this Tribunal has registered and numbered the references (mentioned above in cause title) as I.D. Nos.93, 94, 95, 96, 97, 98, 99, 100, 101 and 102 of 2003 and issued notices to the management as well as to the workmen. For the workmen represented by the Petitioner union in all the above industrial disputes M/s. Ch. Indrasena Reddy & D. Vilas, Advocates appeared as counsels and for the Respondent M/s. A.K. Jaya Prakash Rao, K. Srinivas Rao, P. Sudha, T. Bal Reddy, M. Govind & K. Ajay Kumar, Advocates appeared as counsels.

2. The cause of action as well as facts pertaining to all these ten industrial disputes are similar. Hence, by virtue of the order dated 15.9.2005, this court has clubbed all

these disputes in ID No.93/2003 and further proceedings from that date were taken up and recorded in ID No.93/2003. As such, a common award is being passed for all these disputes.

3. The workmen in all these industrial disputes have filed their respective claim statements with the averments which are similar in all respects and which are in brief as follows:—

Petitioner union is a Trade Union and is competent to espouse the cause of the workmen working under the Respondent. National Airports Authority Kamgar Union was registered on 27.2.1990, its name was changed as Airports Authority Kamgar Union consequent upon Airports Authority of India Act, 1994 came into force. Further, the Airports Authority Kamgar Union has now changed as Indian Airports Kamgar Union with the approval of the Registrar of Trade Unions *vide* letter No.10(4950)/RTU/645 dated 30.4.2002. Airports Authority of India is a statutory corporation under Airports Authority of India Act, after merging International Airports Authority of India and National Airports Authority of India *w.e.f.* 1.4.1995 and the Airports Authority of India includes the establishments of Airport Director, Hyderabad Airport, Begumpet, Hyderabad. All the workmen in these cases are members of the Petitioner union and authorized to present their case before the conciliation officer. All the workmen have been working as sweepers since November, 1996 under various contractors and by office note No.AAI/HY/AD/G.18/01 dated 1.5.2001 the Respondent has terminated the contractors thereby the workmen have been working under the direct control of Respondent on par with the regular employees of Respondent. Workmen were performing duties of permanent and perennial nature. Petitioner union represented several times for regularization of these workmen but in vain. Hence, WP No.24460/1998 was filed which was allowed by the Hon'ble High Court of A.P., with a direction to the Respondent to regularize the services of the workmen within four weeks and further directed to pay them arrears from 1.8.1998. Aggrieved by the order of Hon'ble High Court, Respondent has filed WA No.1011/2000 before Division Bench of High Court, who in turn set aside the orders of Single Judge directing the Petitioner union to approach the conciliation officer for regularization of their services within 30 days, with a further direction to maintain *status-quo*. In pursuance of the orders in writ appeal, Petitioner union has espoused the cause of the workmen before the Regional Labour Commissioner(C) on 17.5.2002 and they are pending. While so, all of a sudden the Respondent has orally terminated the services of the workmen *w.e.f.* 18.5.2002 without assigning any reason, in violation of principles of natural justice. Questioning the oral termination Petitioner union filed WP No.9639 of 2002 and it is pending before the

Hon'ble High Court. It is submitted that during pendency of the said writ petition, the conciliation officer has returned the application of Petitioner union *vide* order dated 9.9.2002. Then, Petitioner union again moved the Hon'ble High Court of A.P., Hyderabad by filing another WP No.6544/2003 questioning the order dated 9.9.2002 of the conciliation officer and it was allowed setting aside the orders dated 9.9.2002 and directing the conciliation officer to take necessary steps for reference of the dispute raised by the Petitioner union *vide* order dated 17.6.2003. In pursuance of the orders dated 17.6.2003, conciliation officer admitted the matter into conciliation, since the Respondent has not settled the matter before the conciliation officer, he has sent a failure report to the government hence, these references. With effect from 1.5.2001, the workmen have worked under the direct control of the Respondent on par with the regular employees consequent to the office note dated 1.5.2001 terminating the contractors. All these workmen have continuously worked for more than 5 years in a permanent vacancy, having worked for more than 240 days in a calendar year and they are entitled for regularization. As per the provisions of Industrial Employment (Standing Orders) Act, 1946, workmen have to be regularized after successful completion of 90 days of service. Petitioner union submits that instead of regularizing the services of the workmen the Respondent has terminated the services of the workmen orally from 18.5.2002 without following the provisions of Industrial Disputes Act, 1947 as such, the action taken by the Respondent against these workmen is illegal, unjust, contrary to law, contrary to the provisions of Industrial Disputes Act, 1947 in violation of principles of natural justice.

4. The Respondent in all these industrial disputes who is one and the same management, filed their counters in all these ten industrial disputes with one and the same averments which are in brief as follows:—

The reference made by the Government of India, for adjudication of the dispute is illegal and unjust, contrary to law and without jurisdiction. There was no relationship of employer and employee between the Respondent and the Workmen. Therefore, the question of termination of services of the Workmen by the Respondent does not arise. Annual maintenance contract for civil works for the period 1998-99 was awarded which was subsequently extended upto July, 1999. No further extension of the said contract was given. Thereafter said tender was called for civil works (repairs and maintenance) and contract was awarded. Respondent does not know as to how many labourers were engaged by the contractor in the piece rate contract and the work for which they were engaged Workmen have not made the contractor under whom they have worked, as a party. Petition is liable to be rejected for

non-joinder of the party. Workmen along with all other contract labourers approached Hon'ble High Court of A.P. and in pursuance of the directions given by the said court they were all continued even after expiry of contract. The judgement passed by the Single Judge was set aside in the writ appeal. Continuance of the Workmen by virtue of the interim orders passed by the Hon'ble High Court of A.P. does not give him any vested right or create relationship of employer and employee which was not in existence. Workmen can not claim any relief in pursuance of the judgement which was set aside by the Division Bench. Petitioner union is not a recognized union and Workmen is not an employee of the Respondent. Workman does not disclose as to under whom he has worked as a contract labourer. Respondent never paid any wages to the Workman as Workman was never employed on the rolls of the Respondent. Workman filed the present application with a distorted version and approached the court with unclean hands. The notification referred by the Workman is no longer in existence the notification dated 1.7.1998 is not relevant to the issue pertaining to the claim of the Workman. Activities of sweeping is not a core activity and not connected with the activity of the Respondent. The judgement in WP No.6544 of 2003 referred to by the Workman is not binding on the Respondent for the reason that Respondent was not made a party to the said proceeding. Hon'ble Supreme Court of India has considered similar issue in the matter of State Bank of Hyderabad [2001 (89) FLR page 354 and 2004(2)LLJ 253], wherein it is held that no award can be passed when there is no relationship of employer and employee. Respondent is not liable to pay any compensation as workmen were never engaged by them.

There is no obligation on the part of the Respondent to comply with the provisions of Industrial Disputes Act, 1947. Therefore, there is no question of violation of any of the said provisions. It is in the sole discretion of the contractor to engage the labour and Respondent has no control over them. If the contractor to whom the contract has been awarded does not engage the Workmen, Workmen can not make any complaint against the Respondent. Respondent never engaged the services of these Workmen and question of regularization of their services does not arise. All the ten references are not maintainable and are liable to be rejected.

5. By virtue of order dated 15.9.2005, it is held that considering the fact that I.D.Nos.93/2003,94/2003, 95/2003,96/2003,97/2003, 98/2003,99/2003, 100/2003, 101/2003 and 102/2003 are all similar in nature and the evidence is common for all these disputes and therefore, it is convenient to club industrial disputes 94/2003 to 102/2003 with I.D.No. 93/2003 and common evidence is to be recorded in I.D.No. 93/2003.

6. Accordingly, Common evidence for all these cases has been recorded in I.D.No. 93/2003.

7. To substantiate the contentions of the workmen WW1 was examined and Exhibits W1 to W32 were marked. On behalf of the Respondent MW1 was examined. No documents were marked.

8. Heard the arguments of either party.

**9. The points that arise for determination are:**

- I. Whether there is relationship of employee and employer between the workmen and the Respondent?
- II. Whether Respondent terminated the services of the workmen with effect from. 18.5.2002? If so, whether the said action on the part of the Respondent is justified?
- III. To what relief the workmen are entitled to?

**10. Point No.1:**

The question whether there is relationship of employee and employer between the workmen and the respondent in these cases is a question of fact. Learned Counsel for the Respondent relied upon the principles laid down in the case of *Workmen of Nilgiri Coop. Mkt. Society Ltd., Vs. State of Tamil Nadu and Others* [(2004) 3 SCC 514]. Wherein it is held that the question whether workers are employees of principle employer or of contractor is a pure question of fact.

11. Therefore, from the facts gathered on record in these cases it is to be verified whether there is relationship of employee and employer between the workmen and the respondent.

12. It is an admitted fact that workmen herein have been contract labourers and worked for the respondent under various contractors upto 1.5.2001, the date on which respondent has terminated the contractors, by office note No. AA1/HY/AD/G. 18/01. It is the contention of the Petitioner that there after workmen continued to work for the respondent directly under the control and supervision of the respondent officials, receiving payment from the respondent directly and therefore, there is employee and employer relationship between the workmen herein and the Respondent. Whereas, respondent, who is admitting that workmen have been working for the respondent even after 1.5.2001 and until 18.5.2002 is claiming that since the workmen's services were taken during that time by continuing them in service by virtue of court's orders, it can not be said that workmen have been in direct employment with the respondent or that there has been employee and employer relationship between workmen and respondent.

13. Now, it is to be verified whether workmen have been continued in service by virtue of any court order which

was set aside later and if so, what is its effect? In this context it is to be noted that if there is no material on record to show that workmen have been continued in service with the respondent by virtue of any court order and as per the directions of the court which were set aside later, it is to be taken that Petitioner has been under the direct employment of the respondent during this period.

14. MW1 the only witness who was examined for the respondent/Management admitted while he was under cross examination that from 1.5.2001 the contract system was terminated by the respondent, but he denied the truth of the suggestion put to him that since then all the workmen in these cases worked with the respondent directly and claimed that they worked under contractor only from 1.5.2001 to 18.5.2002. He claimed that there is record to show the identity of the contractor under whom the workmen have worked for the period from 1.5.2001 to 18.5.2002 and he can produce the same before the court. But no such record has been produced before the court. On the other hand the fact remains that it is not the pleading of the respondent that during this period also the workmen have worked under any contractor. Their claim has been that by virtue of some court order the workmen were continued in service during the said period. But, respondent has not produced any document to show that the services of the workmen were continued by virtue of any court order.

15. Whereas, while WW1 was under cross examination for the Management it is elicited from him that on abolition of Contractor system the workers were continued and they worked under the respondent from 1.5.2001 as per Ex.W3.

16. Ex.W3 is office note dated 1.5.2001 pertaining to the respondent. The subject therein is "Upkeep and maintenance of NTR and RG terminal at Hyderabad Airport" This document reads that "After the expiry of AMC contract, the upkeep and maintenance of both the terminals is being undertaken departmentally with effect from 1.5.2001. For this purpose, Sri Adarsh Kumar, Senior Manager (C) will be looking after the maintenance part New Delhi he will depute suitable engg. Officials for supervision and execution of engg. Works. Shri Sultan Moinuddin Manager (T) will be looking after the cleanliness and upkeep of the building. Thus, ATMs on duty in respective terminals assisted by HKS will depute the workers on the job of upkeep and cleanliness and they will supervise their work. Shri VVK Murthy Asstt. The General Manager (Stores) will make arrangements for supply of stores as required for the above work through SM (C)-II. In this connection, Shri R.P. Singh AGM (ATC) is appointed as the overall in charge to look after the arrangements for the above work in both the terminals. Shri Adarsh Kumar, SM(C)-II, Shri Sultan Moinuddin, Manager (T) and Shri VVK Murthy, Asstt. The General Manager (stores) may coordinate with Shri R.P. Singh for any matter related to the above job."



17. The above referred contents of Ex.W3 are not giving out any information that by virtue of any direction from any court the services of the workmen in these cases were utilized by the respondent. On the other hand from this document what one can understand is that after abolition of the contractor system for upkeep and maintenance of NTR and R.G terminal of Hyderabad Airport, respondent made arrangement for the said work by entrusting supervision of the work of the ATMs and workers who were on the job of upkeep and cleanliness, to various officials of this organization. Therefore, it can clearly be seen from Ex.W3 that respondents has directly taken up the work of upkeeping and maintenance of the NTR and RG Terminal at Hyderabad Airport and under their direct supervision the various workmen engaged for upkeep and maintenance of this place have worked. As already observed above, it is the very contention of the respondent, as can be seen from the facts elicited by them while WW1 was under cross examination, that the workmen herein worked under respondent from 1.5.2001 as per Ex.W3. Therefore, it can safely be held that the workmen in all these cases have worked directly for and under the supervision of the respondent from 1.5.2001 till the date of the termination of their services *i.e.*, 18.5.2002 and further that their being continued in service subsequent to 1.5.2001 was not in pursuance of any court directions.

18. For coming to the above conclusion, the basis is, as already observed above, Ex.W3, the proceeding in pursuance of which, evidently the various workmen in these cases were continued in service even subsequent to 1.5.2001, does not reflect that in pursuance of any court order the workmen were continued in service. Further, there is no document made available on record to prove that the workmen have been continued in pursuance of any court order.

19. One another aspect to be noted is that, while WW1 was under cross examination, on one hand, it has been elicited from them that the workers were continued under the respondent from 1.5.2001 as per Ex.W3, on the other hand, it is suggested to him that workers never worked under the respondent from 1.5.2001 and that there is no relationship of worker and employer, which is denied by WW1. This shows, that the respondent is blowing hot and cold by taking contradictory claims before the court to wriggle out of the obligations arose under the provisions of Industrial Disputes Act, 1947. But the fact established through the evidence on record is that subsequent to 1.5.2001, the date on which respondent abolished the contractor system, they continued to take the services of the various workmen who were working under the contractor till that date, for maintenance and upkeeping of the airport premises, by directly supervising their work, as specified in Ex.W3.

20. Respondent is making a reference to court order as the reason for continuing the various workmen in service

subsequent to 1.5.2001. The details of the said court order are not revealed anywhere in the counter. For the first time while WW1 was under cross examination it is put to him that in view of the status quo order given by the Hon'ble High Court of A.P., in Writ appeal, respondent only paid wages without extracting work which is denied by WW1. From this suggestion what one has to understand is that it is the contention of the respondent that by virtue of the status quo order made by the Hon'ble High Court of A.P., in the judgement made in writ appeal the various workmen were continued in service. The said status quo order can be seen in Ex.W5, the copy of judgment in WA Nos. 865, 866 and 10 11 of 2000 dated 18.4.2002 whereas the workmen herein continued in services of the Respondent even after abolition of Contractor system from 1.5.2001. In this judgment status quo was ordered to be maintained for one month from the date of said judgment. Evidently on the very date of expiry of said period *i.e.*, on 18.5.2002 services of all the workmen were terminated. There is no other previous order prescribing or directing the respondent to maintain status quo, regarding continuation of the workmen in service with effect from 1.5.2001.

21. In view of the fore gone discussion of the material on record, it can safely be held that, the material on record clearly discloses that respondent engaged the services of the various workmen in these cases directly, under the direct supervision of their officials since 1.5.2001 and therefore there is relationship of employee and employer between the Petitioner and the respondent since 1.5.2001 as correctly contended by the Petitioner.

This point is answered accordingly.

## 22. Point No. 2:

It is an admitted fact that respondent terminated the services of the various workmen in these cases with effect from 18.5.2002. As already observed above, after Ex.W5 judgement was rendered by Honble High Court of A.P., in WA Nos. 865, 866 and 1011/2001, in compliance of the direction there in *i.e.*, to maintain status quo for one month respondent continued the various workmen in service for one month and terminated their services on 18.5.2002. Now, it is to be verified whether the said termination of services is legal, valid and justified.

23. As already concluded above, while deciding point No.1, there has been employee and employer relationship between the various workmen and the respondent. The workmen worked for the respondent directly and under their supervision from 1.5.2001 till 18.5.2002 *i.e.*, for more than 240 days. In such case, if there is termination of service the same shall be in compliance of mandatory pre-requisites provided under Sec. 25F of Industrial Disputes Act, 1947. Sec. 25F of Industrial Disputes Act, 1947 reads as follows:—

**"25-F: Conditions precedent to retrenchment of workmen:—** No workman employed in any industry

who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette]."

24. Therefore, the workmen in these cases who worked for more than one year for the respondent *i.e.*, from 1.5.2001 till 18.5.2002 can not be retrenched until they have been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice, for the period of notice. Further more, the workmen have to be paid retrenchment compensation as mentioned in Sec.25F (b) and also there shall be compliance of Sec. 25F(c). Unless there is compliance of all the above mentioned mandatory pre-requisites the retrenchment of the workmen is to be held as null, void, illegal and inoperative and such termination of service of the workmen without complying the mandatory provisions contained under Sec.25F (a) and (b) should ordinarily result in their reinstatement as per the well established legal principles laid down by Hon'ble Apex Court.

25. In view of the fore gone discussion, it can safely be held that the termination of the various workmen in these cases from service by the respondent without complying the mandatory pre-requisites provided under Sec.25F of the Industrial Disputes Act, 1947 makes the said termination as illegal, unjust and invalid.

26. Learned Counsel for the respondent relied upon the principles laid down in the cases of Steel Authority of India Limited and another *Vs.* State of West Bengal and others [(2008) 14 SCC 589], but the principles laid down in this case are not helpful to the facts of the present case since, it is nobody's case that the dispute in this case became stale for any reason. Learned Counsel for the respondent further relied upon the principle laid down in the case of Shankar Chakravarti *Vs.* Britannia Biscuit Co. Ltd., and another [(1979) 3 SCC 371], but the facts and circumstances cited in this case are totally different from that of the present case. The termination of services in the present case is not punitive in nature and there was no scope for domestic

enquiry in the present cases unlike the cited case. Therefore, the various principles laid down in the cited case are not applicable to the facts of the present case.

27. As can be seen from the material on record, in Ex.W5, the judgement of the Hon'ble High Court of A.P., the various workmen and their union are at liberty to seek appropriate relief before the appropriate industrial courts in terms of the judgement of constitutional bench in Steel Authority of India's case. The workmen have approached the Regional Labour Commissioner(C) for espousing the cause of the various workmen by raising individual industrial disputes through Ex.W6 the application made by the workmen to the Conciliation Officer Regional Labour Commissioner(C) invoking Sec.2K of the Industrial Disputes Act, 1947 dated 17.5.2002. On the very next date *i.e.*, on 18.5.2002 services of the various workmen were terminated by the respondent. Thus, it can clearly be seen that without even giving sufficient opportunity to the workmen to have their remedy and further without complying the mandatory prerequisites of Sec.25 F of the Industrial Disputes Act, 1947 respondent has terminated the services of the various workmen which is neither proper, nor justified nor legal.

This point is answered accordingly.

### 28. Point No. 3:

In view of the findings given in points No.1 and 2 above, the various workmen in these petitions whose services were illegally terminated by the respondent without even complying with the mandatory prerequisites provided for in Sec.25F of Industrial Disputes Act, 1947, are entitled for reinstatement into service with all back wages and other attendant benefits, in the light of the mandate given in various well established legal principles laid down by the Hon'ble the apex court.

This point is answered accordingly.

### 29. Result:

In the result, the Petitions are allowed and the schedules in all these industrial disputes are answered as follows:—

The action of the management of Airports Authority of India, Hyderabad in terminating the services of the workmen in I.D. Nos. 93, 94, 95, 96, 97, 98, 99, 100, 101 and 102 of 2003 *i.e.*, S/Sri M. Mallaiah, G. Sadanand, B. Chandraiah, P. Narender, G. Gattamma, G. Padmavathi, P. Narsing Rao, M. Yellaiah, G.N. Yadagiri & T. Subbaratnamma respectively Ex. Sweepers, is neither legal nor justified and therefore the same is hereby set aside. All these workmen shall be reinstated into services of the Respondent as Sweepers forthwith. They all are entitled for back wages *w.e.f.* 18.5.2002 till the date of their respective reinstatement into service and also all other attendant benefits. All the arrears of back wages shall be paid to these workmen by the Respondent forth with.

Award passed accordingly. Transmit.

Typed to my dictation by Smt P Phani Gown, Personal Assistant corrected by me on this the 13th day of September, 2013

M. VIJAYALAKSHMI, Presiding Officer

**Appendix of evidence in all the 10 cases mentioned in cause title**

Witnesses examined for the Petitioners/workmen      Witnesses examined for the Respondent

WW1: Sri G. A. Rudrappa      MW1: Sri V.L.N. Sastry

**Documents marked for the Petitioners/workmen**

- Ex.W1: Photostat copy of certificate of registration of Trade union and constitution dt.27.2.1990.
- Ex.W2: Photostat copy of espousal resolution dt.16.12.2003.
- Ex.W3: Photostat copy of office note of the Respondent dt. 1.5.2001
- Ex.W4: Photostat copy of orders in WP 24460/98 dt.1.8.2000.
- Ex.W5: Photostat copy of orders in WA 865, 866 & 1011/2000 dt.18.4.2002.
- Ex.W6: Photostat copy of application to conciliation officer dt.17.5.2002.
- Ex.W7: Photostat copy of report of conciliation officer dt.9.9.2002.
- Ex.W8: Photostat copy of orders in WP No.6544/2003 dt. 17.7.2003.
- Ex.W9: Photostat copy of order of reference of G.O.I, dt.12.12.2003.
- Ex.W 10: Photostat copy of CLC(C) instruction No.1/1998 dt. 1 .7.1998.
- Ex.W11: Photostat copy of representation of the union to the management dt.16.12.2002
- Ex.W12: Photostat copies of bunch of identity cards issued the workmen (25 in no.).
- Ex.W13: Photostat copy of statement showing details of workers engaged as sweepers in Airports Authority of India with contractors.
- Ex.W14: Photostat copy of charter of demands submitted by Petitioner union to the Respondent.
- Ex.W15: Photostat copy of Memorandum of Settlement dt.19.2.97.
- Ex.W16: Photostat copy of letter from management to the Petitioner union dt. 3.4.97
- Ex.W17: Photostat copy of lr. dt. 28.4.97 from management to the Petitioner union
- Ex.W18: Photostat copy of representation dt.13.3.97 to the chairman of Respondent organization, for regularization of these workmen.

Ex.W19: Photostat copy of representation dt.27.5.97 to the chairman of Respondent organization, for regularization of these workmen and payment of salary on the principle of equal pay for equal work.

Ex.W20: Photostat copy of representation to the chairman of Respondent organization, with request not to violate CL(R&A) Act.

Ex.W21: Photostat copy of list of workmen in this case and the names of contractors with wages paid, submitted before Hon'ble High Court in WP No.24460/98.

Ex.W22: Photostat copy of petition dt.16.3.2000 u/s 2(k) of ID Act before Regional Labour Commissioner(C).

Ex.W23: Photostat copy of office memo dt.20.4.2000 of Ministry of Labour and Employment along with enclosures.

Ex.W24: Photostat copy of lr. dt.7.7.2000 to Regional Labour Commissioner(C) by Petitioner union.

Ex.W25: Photostat copy of lr. dt.30.11.2000 from O/o Regional Labour Commissioner(C) to the Respondent.

Ex.W26: Photostat copy of charter of demands submitted to AAI management by the union dt.7.2.2000.

Ex.W27: Photostat copy of grievance submitted to Airport Director dt. 25.6.2001 by Petitioner union.

Ex.W28: Photostat copy of lr. from Respondent to the Petitioner union.

Ex.W29: Photostat copy of lr. from Petitioner union to the Ministry of Labour and Employment.

Ex.W30: Photostat copy of letter of the Petitioner union to the ALC(C) dt.27.6.2003 .

Ex.W31: Photostat copy of representation dt.29.7.2003 addressed to the National Commissioner for S.C. & ST by the Petitioner union.

Ex.W32: Photostat copy of lr. addressed by the Ministry of Labour and Employment to all the members of Central Advisory Contract Labour Board, recommending abolition of contract labour system in the Respondent organization.

Documents marked for the Respondent

NIL

नई दिल्ली, 8 जनवरी, 2014

का०आ० 304.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअरपोर्ट अथॉरिटी ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के

बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ संख्या 79/2000) प्रकाशित करती है जो केन्द्रीय सरकार को 6/1/2014 को प्राप्त हुआ था।

[सं० एल-11012/19/99-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 8th January, 2014

**S.O. 304.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2000) of the Central Government Industrial Tribunal/Labour Court No.2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India and their workman, which was received by the Central Government on 6/1/2014.

[No. L-11012/19/99-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT - II, DELHI

**Present:** Shri Harbansh Kumar Saxena

**ID No. 79/2000**

Smt. Lata Devi

*Versus*

International Airport Authority of India

#### AWARD

The Central Government in the Ministry of Labour *vide* notification No. L-11012/19/99-IR(M) dated 24.09.1999 referred the following Industrial Dispute to this tribunal for the adjudication:—

"Whether the action of Airport Director, Airport Authority of India(IAD), IGI Airport, New Delhi to discontinue the services of Smt. Lata Devi *w.e.f.* 13.07.98 is legal & Justified. If not, what the workman is entitled to and from which date."

On 28/08/2000 reference was received in this tribunal. Which was register as I.D No. 79/2000 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement. Wherein he stated as follows:—

1. That the claimant has been working as sweeper with the Respondent Authority for the last about 12 years and her last drawn salary was Rs. 3,460.00 per month.

2. That by office order dated 13.07.98, the Respondent Authority has terminated the services of the claimant *w.e.f.* 14.07.1998 on ground of alleged dual marriage.

3. Briefly stated the facts of the present case are as follows:—

- (i) That the claimant was married to Shri Sushthi Dass (Shrushthi Dass) about 25 years back at village Mayapur, District Malda and has three children out of the said marriage wedlock, namely Lakhi (Daughter, Ram Kishan (Son) and Shanta (Daughter).
  - (ii) That about 12 years back the claimant has shifted to Delhi alongwith her family to earn her livelihood. Since, then, the Claimant has been staying in Delhi but unfortunately due to illhealth her husband *i.e.* Shri Shrushthi Dass had to shift back to his native place at Malda and since then the claimant alongwith her children has been staying with a near relative of her husband, *i.e.* Shri Khushi Ram, and she has been visiting her husband at her native place during her vacations and Shri Shrushthi Dass had also been visiting Delhi off and on and has been staying with the claimant but his health did not permit him to Stay in Delhi for longer period of duration as he has to continue with his medical treatment at his native place.
  - (iii) That in the year May '96, at the time of the preparation of the Ration Card, due to some mistake, the name of Sh. Khushi Ram was mentioned in place of the name of the husband of the claimant as she had gone to the office of the Rationing Officer alongwith Sh. Khushi Ram but the claimant failed to notice the said fact and she is illiterate and only knows how to subscribe her name in Hindi script.
  - (iv) That consequent upon Hon'ble Supreme Court judgment dated 06.12.1996, ex-contract workers engaged in the field of sweeping, cleaning and dusting at I.G.I Airport were taken under care of A.A.I. *w.e.f.* 01.02.1997, pending detailed scrutiny by Management. A process was accordingly, initiated to examine the cases of these workers for considering them for regularization, including the case of the claimant.
  - (v) That *vide* office order dated 13th July, 98, the Claimant service have been discontinued *w.e.f.* 14.07.98 on the alleged ground of dual marriage, without giving to the claimant any opportunity of being heard.
  - (vi) That being aggrieved of the above action or the respondent the claimant sent its representation dated 21.07.1998 to Respondent but the respondent failed to act according to law.
- (4) Thus, the claimant had to move the conciliation officer, Curzon Road, New Delhi, but the conciliation proceedings before the conciliation officer have failed on 05.04.1999 and thus the present Industrial Dispute.



(5) Being aggrieved of the above action of the respondent, the claimant challenges the same on the following amongst other.

#### Grounds

- (A) Because the action of the Respondent is illegal, arbitrary and against all the canons of justice.
- (B) Because no opportunity of hearing has been given to the claimant before passing the impugned order by the Respondent.
- (C) Because the Respondent has failed to consider that the said mistake in the recording of the name of the husband of the Claimant was due to the fact that the respondent is illiterate and only known how to subscribe her name in Hindi script.
- (D) Because the services of the Claimant/Workman were terminated without assigning any reason or serving any charge-sheet or conducting any domestic enquiry.
- (E) Because the Respondent has failed to consider that the services of the Claimant were liable to be continued in view of the Hon'ble Supreme Court's Judgment dated 06.12.1996.
- (F) Because the finding of the respondent is *mala-fide*, perverse and against the material available on record as through-out the service period of the work of the Workman/Claimant remaining satisfactory and she served her superiors to their entire satisfaction.
- (G) Because the order passed by the Respondent/Management thereby terminating the services of the Workman/Claimant is unlawful, unconstitutional and void-ab-initio and the same is liable to be quashed and the Claimant/Workman is entitled to reinstatement with continuity of service and full back wages as the Claimant/Workman is out of job from the date of termination and suffering very much economical problems.

On the Basis of which he prayed that this Hon'ble Adjudicating tribunal may graciously be pleased to:—

- (a) Pass an Award in Favour of the Workman/Claimant and against the Management/Respondent thereby quashing and setting-aside the impugned order dated 13.07.1998 with directing the reinstatement of the Claimant/Workman with continuity of service and full back wages alongwith all dues and earned wages as per the last drawn pay @ Rs.3,460/- per month and consequential benefits.
- (b) Allow the costs of claim in favour of the claimant/workman and against the Respondent/Management.

- (c) Pass any other such order(s) as this Hon'ble court may kindly deem fit and proper in the interest of justice and in the facts and circumstances of the case.

#### REPLY ON BEHALF OF THE MANAGEMENT/RESPONDENT TO THE STATEMENT OF CLAIM OF THE CLAIMANT.

##### Preliminary objections:—

1. That the claimant was never employed by the Respondent as such there is no relationship of employer and employee between the claimant and the Respondent and as such the claim of the claimant is not maintainable and as such the same is liable to be dismissed.

##### Reply on Merits:—

1. That the contents of the Para no.1 of the statement of claim are wrong, false and hence denied. It is denied that the claimant had been working as a sweeper with the respondent Authority for the last about 12 years. It is further denied that the last drawn salary of the claimant was Rs.3,460/- per month. The true facts are that the claimant was engaged by the ex-contractor M/s Office Care Services and she was working as a sweeper under the ex-contractor in the Cargo Terminal.

2. That the contents of Para No.2 of the statement of claim are not denied.

3. (i-iii). That the contents of paras No. 3(i-iii) of the statement of claim are wrong, false and concocted one and as such the same are denied. It is denied that the name of Kushi Ram was mentioned in place of the name of the husband of the claimant due to some mistake. It is further denied that the claimant failed to notice that the name of Kushi Ram was mentioned in the Ration Card in the capacity of her husband as she was an illiterate and only knew how to subscribe her name in Hindi script. It is submitted that the contents of the paras under reply are the sheer concoction of the mind of the claimant and are an after thought for gaining undue benefits for which she is otherwise not entitled for.

3(iv) That the claimant of Para No.3 (iv) of the statement of claim are not denied.

3(v) That the contents of Para No.3 (v) of the statement of claim are admitted to the extent that vide office order dated 13.07.98 the services of the claimant was discontinued on the ground of dual marriage and the rest of the para is wrong, false and hence denied. It is denied that the claimant was not given any opportunity of being heard before discontinuing her services. It is submitted, that only after detailed scrutiny by the committee, the services of the claimant was discontinued.

3(vi) That the contents of Para No. 3(vi) of the statement of claim are wrong, false and hence denied. It is denied that the Respondent failed to act according to the law.

4. That the contents of Para No.4 of the statement of claim is a matter of record.

5(A) That the contents of Para No.5 of the statement of claim are wrong, false and hence denied. It is denied that the action of the Respondent is illegal, arbitrary and against all the canons of justice. It is submitted that on scrutiny the Respondent found that the claimant in her affidavit dated 14.02.97, submitted to the Respondent, had declared her husband name as Sh.Shanti Dass whereas from the Photo Identity Card issued by the Election commission of India and from the Ration Card, the name of the claimant's husband is Shri Kushi Ram and as per Respondent's Rules And Regulations any person who has entered into dual marriage, is not entitled for employment in the services of the Respondent's Authority and in pursuance of the same, the services of the claimant was discontinued.

5(B) That the contents of Para No.5 (B) of the statement of claim are wrong, false and hence denied. It is denied that no opportunity of hearing was given to the claimant before passing the impugned order. It is submitted that in pursuance of the pronouncement of Judgment by the Supreme Court in the matter of Air India Statutory Corporation etc., Vs. United Labour Unions etc. a process to regularize the services of those ex-contractor workers, who were on rolls under various contractors with the Respondent engaged in the field of sweeping, cleaning and dusting was taken up by the Respondent in conformity to the services rules, job specification etc. of the Respondent as applicable on 06.12.96. In pursuance of the same a committee of officers was constituted by the Airport Director for interviewing/scrutiny of documents such as birth certificate, Ration Card etc. of the ex-contract workers and a medical board was also constituted for medically examining them where there was no proof of their authenticity of the Date of Birth and the claimant was examined by the committee of officers constituted by the Respondent Authority for interviewing/scrutiny of documents and only after that the services of the claimant was not regularized as the case of the claimant was not found to be of dual marriage.

5(C) That the contents of Para No. 5(C) of the statement of claim are wrong, false, misconceived and hence denied. It is denied that the claimant is illiterate and only knows how to subscribe her name in Hindi script. It is submitted that the claimant knew that her Photo Identity Card and Ration card had the name of Kushi Ram as her husband and it was not being mentioned thereon due to some mistake.

5(D) That the contents of Para No.5(D) of the statement of claim are wrong, false, misconceived and hence denied. It is submitted that in view of the averments made in the foregoing paras of the present reply, the workers those

who were on the roll on 6.12.96 through some contractor in the field of sweeping, cleaning were to be regularized because of the Judgment of the Hon'ble Supreme Court and were not recruited, accordingly the Respondent was not recruited, accordingly the Respondent was not liable to serve any charge sheet or conduct any domestic enquiry as alleged by the claimant, more so, the claimant was not a regular employee of the Respondent, accordingly the question of serving the charge sheet or conducting of the domestic enquiry did not arise. However it is submitted that the claimant was examined by the committee of officers constituted by the Respondent Authority.

5(F) That the contents of Para No.5 (f) of the statement of claim are wrong, false and hence denied. It is denied that the findings of the Respondent is *malafide*, perverse and against the material available on record. It is submitted that the finding of the Respondent is based upon the material available on the record. It is further submitted that the claimant was never in the employment of the Respondent, the question of any complaint against the claimant did not arise.

5(G) That the contents of Para No.5 (G) of the statements of claim are wrong, false and hence denied. It is denied that the order passed by the Respondent/Management whereby discontinuity the services of the claimant/workmen is unlawful, unconstitutional and void-ab-initio or the same is liable to be quashed. It is denied that the claimant is entitled to be reinstated with continuity of service and full back wages. It is denied that the claimant is out of job from the date of discontinuity and is suffering economical problems It is submitted that the order passed by the respondent is as per the Rules And Regulations of the Respondent's organization.

It is therefore prayed that the claim of the claimant be dismissed with heavy cost.

#### **REPLICATION ON BEHALF OF THE CLAIMANT/WORKMAN ARE AS FOLLOW:—**

1. That the Preliminary objection No.1 is wrong and denied. It is submitted that it is an admitted case of the Respondents/Management that the services of the Claimant/Workman were discontinued *w.e.f.* 14-07-1998 *vide* office order No. ADD/PERS/38(1)/98/20 dt. 13.7.98 and if there was no relationship of employer and employee, the question of discontinuance of service would not arise at all. Thus the preliminary objection is misconceived and deserves to be rejected outrightly.

#### **Replication to reply on Merits:—**

- (1) That the contents of Para No.1 of the reply are wrong and denied and the contents of Para No.1 of the claim statement are reiterated as correct. It is further submitted that the factum of last drawn salary being Rs. 3,460.00 per month is well borne

out from the records of the Respondent/ Management which bear the signatures of the Claimant/Workman also.

- (2) That the contents of Para No.2 of the reply do not need any Replication.
- (3) That the contents of Para No.3 (i-iii) and (v-vi) of the reply are wrong and denied and the corresponding paras of the claim statement on behalf of the claimant/workman are reiterated as correct. Contents of Para No.3 (iv) do not need any replication. It is further reiterated that claimant/workman has never married Shri Khushi Ram but the wrong mentioning of the name of Shri Khushi Ram as husband of the Claimant/ Workman was an inadvertent mistake and Shri Shrushti Das was and continues to be the husband of the Claimant/Workman and the presumption of the Respondent/Management regarding the dual marriage of the claimant/ workman is baseless, misconceived and perverse because the claimant/Workman was not given any opportunity to explain the circumstances under which the said mistake had occurred and thus the act of the Respondent/Management is bad in law.
- (4) That the contents of Para No.4 of the reply do not need any replication.
- (5) That the contents of Para No. (5) (A) to (5) (G) of the reply are wrong and denied and the corresponding paras of the claim statement on behalf of the Claimant/ Workman are reiterated as correct. It is submitted that consequently upon the Hon'ble Supreme Court Judgement dt. 06.12.1996, the ex-contract workers engaged in the field of sweeping , cleaning and dusting at I.G.I Airport were taken under case of A.A.I w.e.f 01.02.1997, pending detailed scrutiny by the management and accordingly, process was initiated to examine the cases of those workers for considering them for regularization, including the case of the claimant/Workman and the Respondent/Management was not justified in discontinuing the services of the claimant/ workman on the presumption of alleged dual marriage without any proof of the same and without giving any opportunity to the claimant/ workman to explain the circumstances in which the said mistake of wrong noting of husband's name had occurred and the claimant/workman is being made to suffer mental and economical problems due to the *malafide*, perverse and filmy findings of the Respondent/ Management on the basis of imaginary grounds and the act of the Respondent Management is illegal, arbitrary and against all the canons of justice and is liable to be

quashed/sed aside as unlawful, unconstitutional and void-ab-initio and the Claimant/ Workman is liable to be reinstated with continuity of service and full back wages alongwith all dues, benefits and earned wages alongwith consequential benefits as claimed in the claim statement of the Claimant/Workman.

It is, therefore most respectfully prayed that this Hon'ble Adjudicating Tribunal may graciously be pleased to pass an Award in Favour of the Claimant/Workman and against the Respondent/ Management as claimed in the claim statement of the claimant/workman.

On basis of pleadings of parties following issues have been framed by my Ld. Predecessor on 12/07/2004 :—

1. Whether there does not exist relationship of employer and employee between the workman & management and as such claim is not maintainable? Onus on both the parties.
2. Whether the claim of the workman is not maintainable? Onus on both parties.
3. As in terms of reference?

Lata Devi in support of her case filed her affidavit on 20.4.2005. Her affidavit alongwith the document *i.e.* I card, Ration Card, Death Certificate of Sri Shrushti Dass.

1. That I am the Applicant/Workman in the aforementioned case and as such fully conversant with the facts of the case and able to depose this affidavit.

2. That the Applicant/Workman was married to Sh. Shrushti Dass about 30 years back and has three children from the said marriage wedlock namely (i) Lakhi (daughter), (ii) Ram Kishan (son) and (iii) Shanta (daughter). The report cards/certificate issued by the school are marked as Exhibit WW-1/A (collectively).

3. That at the time of the preparation of the Ration Card, due to some *bonafide* mistake, the name of Sh. Khushi Ram was erroneously mentioned in place of the name of the husband of the Applicant/Workman but the Applicant/ Workman failed to notice the said error as she is illiterate and only knows how to subscribe her name in Hindi script.

4. That consequent upon Hon'ble Supreme Court Judgment dated 06.12.1996, ex-contract workers engaged in the field of sweeping, cleaning and dusting at I.G.I. Airport were taken under care of A.A.I w.e.f. 01.02.1997.

5. That about 15 years back the Applicant/Workman shifted to Delhi alongwith her family to earn her livelihood. Since then, Applicant/Workman has been staying in Delhi but unfortunately due to ill health her husband *i.e.* Sh. Shrushti Dass had to shift back to his native place and since then the Applicant/Workman has been staying with a near relative of her husband, Shri Kushi Ram, Sh. Shrushti Dass

used to come to Delhi of and on to undergo medical treatment due to his illness and during the pendency of the present proceedings, the husband of the Applicant/Workman, Sh. Shrushti Dass, has died on 19.08.2002 at Delhi. His death certificate is marked as Exhibit WW-1/B.

6. That *vide* office order dated 12th July, 1998, the services of the Applicant/Workman have been discontinued *w.e.f* 14.07.1998 on the alleged ground of dual marriage without giving any show cause notice and without affording any opportunity of hearing being given to the Applicant/Workman before passing the impugned order and the Respondent have failed to consider that the wrong mentioning of the name of the husband of the Applicant/workman was by some mistake which occurred due to the fact that the Applicant/Workman is illiterate and only knows how to subscribe her name in Hindi script and she failed to notice that the name of Shri. Khushi Ram was wrongly mentioned in place of the name of the husband of the Applicant/Workman. There has been no relationship of husband and wife between the Applicant/Workman and Sh. Khushi Ram. Sh. Khushi Ram is the younger cousin brother of my husband. The name of Sh. Khushi Ram in the Ration Card has been wrongly mentioned by the Ration Card Authorities as at the relevant time of enquiry made by the department, my husband was not in the house and was sick in the village. The Ration Card was prepared on the spot visit and no written submission was made either by way of application or by way of declaration or affidavit. On the mistake being noted, necessary corrections has been made both in the ration card and the election voter card from the appropriate Govt. Authority. I affirm that my marriage has taken place with Late Shri Shrushti Dass. His death has taken place during the pendency of the present proceedings. Thereafter, I have not married. I do not have a common mess with my Dever Sh. Khushi Ram. I am separately and independently living in the house with my family members comprising of two daughters and one son as described above. My relationship with Sh. Khushi Ram is only that of my Dever in the family, who is looking after myself and my family as I have no other adult male member in the family. My children are of minor ages. I did not marry a second time with anyone either during the lifetime of my deceased husband Sh. Shrushti Dass or even after his death. The plea taken by the management in this regard is wrong, illegal and without any opportunity of hearing to the Applicant/Workman. The corrected copies of Ration Card and Election/Voter Identity Card filed with the Rejoinder are marked as Exhibit WW-1/C.

7. That being aggrieved of the above action of the Respondent the Applicant/Workman sent its representation dated 21.07.1998 to Respondent but the Respondent failed to act according to law.

8. That the Respondents have further failed to consider that the services of the Applicant/Workman were liable to

be continued in view of the Hon'ble Supreme Court's Judgment dated 06.12.1996 as consequent upon the Hon'ble Supreme Court's judgment dated 06.12.1996, ex-contract workers engaged in the field of sweeping, cleaning and dusting at I.G.I Airport were taken under care of A.A.I., the Respondent herein, *w.e.f* 01.02.1997.

9. That my claim statement dated is correct and the same bears my signature at place marked as Mark-'A' and the award may kindly be passed as prayed therein.

**Her affidavit was tendered in evidence on 6/07/2005. Her statement is as follows:—**

I have filed my affidavit in evidence. The same in Ex. WW1/A. It may be read as part of my evidence. The report card/certificate issued by the school of the children No.1 Lakhi (2) Ram Kishan (3) Shanta is Ex. WW1/A. Death Certificate of Shri Shrushti Dass is Ex. WW1/B. copies of Ration Card and Election /Voter I. Card of Lata Devi is Ex. WW1/C. Claim statement is Mark A. (Original I. Card and Death Certificate brought. Seen and returned to be brought at the time of arguments.

She was cross-examined by A/R for the management on 28/10/2010. Her cross-examination is as follow:—

I never gave any application for employment with the management. It is correct that I was an employee of ex-contractor, M/s. Office care Service. It is correct that the officers of the Scrutiny Committee of the management had asked me to appear and provide copies of ration card, voter's ID card and also to file an affidavit. Again said, voter's ID card was not asked from me. Nothing was asked from me by the committee. It is correct that my husband's name in the ration card was mentioned as Khushi Ram and not Shrushti Dass. I am totally uneducated and as such I cannot read or write. I had submitted document Ex. WW.M/1 before the committee of the management . It is correct that in the copy of the card given by me to the Scrutiny Committee, the name of my husband was mentioned as Khushi Ram. It is correct that Shrushti Dass and Khushi Ram were two different persons. It is incorrect to suggest that I was never a permanent employee of the AAI . I did not know what was written in the ration card or in the voter's ID cards as I do not know how to read and write and I am illiterate . I never cast my vote before the date of termination of services. The committee did not tell me that I had furnished false documents with my husband's name as Khushi Ram. It is wrong to suggest that I have no good case for reinstatement . It is incorrect to suggest that my husband's name is Khushi Ram who is alive today and not Shrushti Dass who is dead . It is incorrect to suggest that I married both Shrushti Dass as well as Khushi Ram. I do not even know the address of Khushi Ram. It is wrong to suggest that I am deposing falsely.



In support of her statement she examined WW2, Khushi Ram who filed affidavit on 20/4/2005 are as follow:—

1. That I am the cousin brother-in-law of the Applicant/workman according to the village customs as living in the same village and neighbourhood.

2. That I am not a married persons and I further say I did not have any marriage with the Applicant/Workman namely, Smt. Lata Devi. I do not have a common mess with Smt. Lata Devi and his family. My name in the Ration Card was recorded wrongly by the Rationing Authority, as at the relevant time of enquiry made by the department, her husband was not in the house and was sick in village. The Ration Card was prepared on the spot visit and no written submission was made either by way of application or by way of declaration in affidavit for the preparation of the ration card. I and Smt. Lata Devi being illiterate, could not notice the said mistake and the mistake when noted was got rectified immediately with the Rationing Authority. And likewise the entry in the Voter Identity Card was made on the basis of the entry appearing in the Ration Card and after detection of the said mistake, the same was also got correct from the Govt. of NCT of Delhi. Therefore, the ration card did not bear the photograph of the adult male member of the family being the husband it bears only the photograph of Smt. Lata Devi. The Respondent/Management did not take into account these facts while considering the case of the Applicant/Workman and correctness of the ration card. Smt. Lata Devi remains the head of the family and not Shri Khushi Ram.

His affidavit was tendered in evidence on 6/7/2005. His statement is as follow:—

I have filed my affidavit in evidence. The same is Ex. WW2/1. It may be taken on record and read in evidence in support of the case of the workman.

He was cross-examined by A/R for the Management on 28/10/2010.

**His cross-examination is as follows:—**

Lata Devi is not related to me at all. I do not live with Smt. Lata Devi WW! Nor I ever lived with her. It is wrong to suggest that I am deposing falsely that I am unmarried till today or that I ever married WW1 Smt. Lata Devi and she is my wife. I am labourer. I am totally illetrate. I do not know if that the husband's name of Smt. Lata Devi mentioned in her ration card is Khushi Ram. I came to know about this when she had lost her job and she came crying to me. Today, Lata Devi told me that her case is fixed and my evidence will also be recorded and I have come at her instance. It is incorrect to suggest that I am the husband of Smt. Lata Devi WW1 or that I am living with her under one roof It is wrong to suggest that I am deposing falsely to help Lata Devi.

**In support of its case** management filed affidavit of Shri. Girish Kumar which having following contents:—

1. I state that I am Senior Manager (HR) and looking after the matters pertaining to this case at present, am conversant with the facts of the case as per record and information received and am fully competent and authorized by the management, Airports Authority of India to depose in the present matter.

2. I state that the claimant was never employed by the management of Airports Authority of India as such there is no relationship of employer and employee between the claimant and the management of Airports Authority of India.

3. I state that the claim of the claimant workman is liable to be dismissed in view of the judgment in the matter titled as Steel Authority of India Vs. National Union Water front Workers has over ruled its judgment dated 6.12.1996 in Air India's case and has held that the notification dated 9.12.1976 issued by the Central Government does not satisfy the requirements of section 10 of the CLRA Act and as such the same is quashed prospectively *i.e.* from the date of this judgment subject to the clarification that on the basis of this Judgment no order passed or no action taken giving effect to the said notification on or before the date of this Judgment, shall be called in question in any Tribunal or court including a High Court if it has otherwise attained finality/or it has been implemented. It has been further held that neither Section 10 of the CLRA Act nor may other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of the contract labour on issuing a notification by appropriate Government under Section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment, consequently the principal employer cannot be required to order absorption of the contract labour in the concerned establishment.

4. I state that the claimant as per her own particular was not at all on the rolls on 6.12.96 which was the cutoff date for regularization of the ex-contractor workmen as per the judgment dated 6.12.96 of the Hon'ble Supreme Court in Air India's case. I further deny that the claimant was working with the Airport Authority.

5. I state that the Airports Authority of India *i.e.* the management had been awarding the contracts and the contractors had been getting the execution of the awarded jobs on employing workers under their employment, who had no relationship of employee with the Airport Authority of India *i.e.* management as employer and had never been in direct employment of the Authority. After the judgment dated 6.12.96 of the Hon'ble Supreme Court in the matter of Air India Statutory Corporation etc. Vs United Labour Union etc.

about thousand applications were received for the purposes of seeking regular services with the Authority out of which several were bogus. All such applicants were merely taken under care by the Authority *i.e.* Management *w.e.f.* 1.02.97 to ascertain the eligibility/authenticity for their regularization and were paid lump sum monthly honorarium as an interim arrangement till the proper scrutiny was done. Subsequently, House keeping Department was instructed to obtain affidavits from the persons engaged in the field of sweeping, dusting and cleaning and forward the same to the department of Personnel. These affidavits were forwarded to the department of Personnel by EHK —II in May, 1997. After this all the ex-contractors as on 6.12.96 and those affidavits which had been received by the Department of Personnel were called to appear before the committee of officers constituted by the then Airport Director to elicit the data from ex-contract workers regarding their experience, age etc. A Medical Board was also constituted consisting of the Medical Officers of AAI (IAD) and a medical officer from the Government Department for medically examining all the ex-contract workers whose affidavits had been received with respect of their fitness condition and age. After this a committee consisting of House Keeping Supervisors was appointed to physically identify the ex-contract workers.

A committee of officers was also constituted and the following guidelines were issued to the committee members to make tabulations in respect of ex-contract workers:—

- (i) Pay bills/acquaintance rolls for the period September, 1996 to December, 1996 should be checked so as to see the continuity of a person (with name and signature) in the employment of AAI (IAD) on sweeping cleaning/dusting job and also to see whether the employee was on the rolls on 6.12.96.
- (ii) Personal knowledge by identification of the contract workmen by the House Keeping staff.
- (iii) Observation of the committee who had interviewed the contract workmen.
- (iv) Any other supporting evidences to cross check the authenticity with attendance record. PIC/ESI wherever available.

6.I state that on scrutiny of the applications, affidavits, pay bills and attendance sheets of December, 96 and other relevant documents by the Scrutinizing Committee constituted by the authority, it was found that several bogus applications with tempered photocopies of PIC, with duplicate/forged signatures upon declaration and affidavits and also false affidavits have been made and thus the Authority scrutinized the application strictly and on finding the same not genuine the same were rejected and such

persons taken under care were asked not to report on duty as not found eligible. For genuinity and verification school certificates, ration card, election card and other documents were also considered.

7.I state that the reasons/factual positions in respect of the claimant is that on scrutiny it was found that she in her own affidavit dated 14-2-1997, submitted to the management had declared her husband's name as Sh. Shanti Dass whereas from the Photo Identity Card issued by the Election Commission of India and from the Raion Card, the name of the Claimant's husband is Sh. Kushi Ram. Hence, even otherwise as per the Management's Rule and Regulations any person who has entered dual marriage is not entitled for any employment in the services of the management and hence her claim was not considered for this reason as well.

8.I state that the claimant never worked directly with the Management of Airport Authority of India or any Identity Card was issued to her.

9.I state that the claimant never fulfilled the conditions of eligibility of being appointed on the basis of the Supreme Court Judgment. I further state that the claimant had not been found eligible for the job after detailed scrutiny by the Management. After the judgment dated 6.12.96 of the Hon'ble Supreme Court in the Air India's matter all the applicants/claimants workmen were just taken under care and not in the employment wherein it can be said that any show cause notice or any reason for discontinuing their services or termination order or salary in lieu of notice or retrenchment compensation was required to be served/paid. It is pertinent to mention here that at no point of time direct relationship between the claimant and the Management Authority came into existence.

10.I state that considering the facts of the matter the claimant is neither eligible nor entitled to be reinstated in service nor to be regularized with continuity of service from any date with any back wages.

His affidavit was tendered on 20/12/12. He was cross-examined on the same day. His cross-examination is as follow:—

I was posted at Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi on 13.7.1998 Smt. Lata Devi workman was never working under me. I have not gone through the order dated 15.2.2002 passed by Sh. P.N.Pandey; the then learned Presiding Officer of CGIT, New Delhi. I do not know if this order was challenged by our department.

I am ware the 50-60 sweepers were regularized after the delivery of judgment in the case of Steel Authority of India Vs. National Union Water Front workers, dated 06.12.1996. I am aware that our office had asked for some documents from the workman in order to consider her case for regularization along with few other workers.

Q. I put it to you that the workman married only once in life and the name of her husband was Shruhti Dass.

Ans. It may be correct but I have no knowledge.

In case the workman had married only once and that fact was brought to our notice, her case could have been considered for regularization if she fulfilled other requirements in this regard also.

Q. I put it to you that the case of the workman for regularization was wrongly rejected taking her as a lady who had married twice in her life though she had fulfilled all other requirements for regularization.

Ans. It may be correct.

The workman never conveyed the name of her husband as Shrushti Dass. I admit that the workman is illiterate. I had not personally seen the Election Commission of India card Ex. WW. I/C in respect of the workman though the scrutiny committee must have seen all this.

Q. I put it to you that many senior and junior workers to the workman were regularized.

Ans. All those who fulfilled the requirements were regularized.

According to us the workman was not our employee and so we did not feel the necessity to do any enquiry into her case or to give any other opportunity to her expect scrutinizing her documents. It is wrong to suggest that the case of the workman has been deliberately rejected wrongly. It is incorrect to suggest that we denied natural justice to the workman.

**Workman Arguments on Behalf of workman are as follows:—**

1. That the appropriate Government *i.e.* Ministry of Labour, Govt. of India *vide* order No.L 11012/19/99-IR(M) dated 24.09.1999 has referred the following dispute before this Hon'ble Tribunal as per the Schedule mentioned as under:

"Whether the action of Airport Director, Airport Authority of India(IAD), IGI Airport, New Delhi to discontinue the services of Smt. Lata Devi *w.e.f* 13.07.98 is legal & Justified. If not, what the workman is entitled to and from which date."

2. Brief facts of the case:—

- (a) The facts of the case are mentioned in the statement of claim of the workman.
- (b) Smt. Lata Devi W/o. Late Shrushti Dass married in her native place at Malda District, West Bengal. She was employed in the year 1990 for the work of

sweeping for the establishment of International Airport Authority of India and after the decision of Hon'ble Supreme Court of India dated 6th December, 1996 reported in 1996(9) SCALE AIR INDIA STATUTORY CORPORATION ETC. Vs. United Labour Union & Ors etc. The Hon'ble Supreme Court has held that after Abolition of Contract system from any establishment under section 10 of ID. Act by appropriate Government the erstwhile contract labour covered by the sweep of such abolition of the concerned activity would be entitled to be treated as direct employee of the employer whose establishment they were earlier working and they would be entitled to be treated as regular employee atleast from the day on which the concerned labour system in the establishment for the work which they were doing gets abolished. The operative portion of the judgment in para 72 is reproduced as under:

"72. So far as the judgment of the three Member Bench of this Court in R.K Panda & Ors Vs. Steel Authority of India & Ors (1994) (5 SCC 304) is concerned, it is true that in para 6 of the report in the last four lines it is observed while referring to Dena Nath's case (*supra*) that neither the Act nor the Rules framed by the Central Government by any appropriate Government provide that upon abolition of the contract labour, the laborers would be directly absorbed by the principal employer, but that is not the ratio of the decision of the said three-Member Bench. It has only referred to what Dena Nath's case decided. It is also required to be noted that the question which has been posed for our consideration is as to what is the fate of the erstwhile contract labour on abolition of contract labour system in the establishment under Section 10 of the Act. Such a question had not come upto the consideration before this Court in R.K. Panda's case (*supra*). Therefore, it would not be urged that the Ratio of Dena Nath's case was approved by three Member Bench in R.K. Panda's Case (*supra*). In the latter case no abolition was directed by appropriate Government under Section 10 of the Act. It was a case in which the contract labourers were claiming to be absorbed directly by the principal employer without they being any order under section 10. Consequently, the question with which we are concerned in the present case did not fall for consideration of the Bench in R.K. Panda's Case (*supra*), nor had the Bench decided that question one way or other. I, therefore, respectfully concur with the view taken by Brother Ramaswamy.J on the scope and ambit of Section 10 of the Act and hold that on abolition of contract Labour system from any establishment



under Section 10 of the Act by the appropriate Government the logical and legitimate consequences thereof will be that the erstwhile regulated contract labour covered by the sweep of such abolition of the concerned activities would be entitled to be treated as direct employee of the employer on whose establishment they were earlier working and they would be entitled to be treated as regular employees at least from the day on which the contract labour system in the establishment for the work which they were doing gets abolished.

3. That the central Government exercising the power u/s 10 of the I.D. Act on the basis of recommendation and in consultation with Central Advisory Board constituted u/s 10(1) of I.D. Act issued a notification on December 9, 1976 prohibiting "employment of contract labour on and from December, 9, 1976 for sweeping, cleaning dusting and watching of buildings owned or occupied by the establishments in respect of which the appropriate government under the said Act is the Central Government." This fact is mentioned in para 3 of the judgment of AIR India Statutory Corporation etc. is reproduced as under:

**"3 The appellants engaged, as contract labour, the respondent union's members, for sweeping, cleaning, dusting and watching of the buildings owned and occupied by the appellant. The Contract Labour (Regulation and Abolition) Act, 1970 (for short, the 'Act') regulates registration of the establishment of principal employer, the contractor engaging and supplying the contract labour in every establishment in which 20 or more workmen are employed on any day of the preceding 12 months as contract labour. The Act had come into force from September 5, 1970. The appellant had obtained on September 20, 1971 a certificate of registration from Regional labour Commissioner (Central) under the Act. The Central Government, exercising the power under Section 10 of the Act, on the basis of recommendations and in consultation with the Central Advisory Board constituted under Section 10(1) of the Act, issued a notification on December 9, 1976 for sweeping, cleaning dusting and watching of building owned or occupied by the establishment in respect of which the appropriate government under the said Act is the Central Govt. However, the said prohibition was not to apply to "outside" cleaning and other maintenance operations of multi-storied buildings where such cleaning or maintenance cannot be carried out expect with specialised experience'. It would appear the Regional Labour Commissioner (Central) Bombay by letter dated January 20, 1972 informed the appellant**

**that the State Government is the appropriate Government under the Act. Therefore, by proceedings dated May 22, 1973 the Regional Labour Commissioner (Central) had revoked the registration. By amendment Act 46 of 1982, the Industrial Dispute Act, 1947 (for short, the 'ID Act) was made applicable to the appellant and was brought on statute book specifying the appellant as one of the industries in relation to which the Central government is the appropriate Government and the appellant has been carrying on its business "by or under its authority" with effect from August 21, 1982. The act was amended bringing within its ambit the Central Government as appropriate Government by amendment Act 14 of 1986 was effect from January 28, 1986.**

4. The MW1/A Shri Girish Kumar in its Affidavit stated that the judgment titled "Steel Authority of India Vs. National Union Water Front Workers in its Judgment dated 6.12.1996 in Air India Case has held that the notification dated 9.12.1976 issued by the Central Government has overruled on 30.08.2001. It is proved that during 6.12.1996 till 30.08.2006 has intact and the Management implemented the said judgment and admitted in cross-examination that "I am aware that 50-60 sweepers were regularized after the delivery of judgment in the case of Steel Authority of India Vs. National Union Water Front workers, dated 06.12.1996, I am aware that our office had asked for some documents from the workman in order to consider here case for regularization alongwith few other workers".

5. It is proved that the Office Order dated July 13, 1998 the Management accepted the judgment of Hon'ble Supreme Court dated 6th December 1996 reported in 1996(9) SSCALE titled AIR INDIA STATUTORY CORPORATION ETC. VS. UNITED LABOUR UNION AND OTHERS ETC. In view of this judgment Smt. Lata Devi who is appointed on Contract Labour for sweeping the work of International Airport Authority in the year 1999 so she deemed to be employee of Air India Statutory Corporation Vs. United Labour Union ect" w.e.f the judgment in the case dated 6th December 1996 retrospectively i.e. in the year 1999. The operative portion of the said judgment i.e. Air India Statutory Corporation Vs. United Labour Union mentioned in para 72.

6. That the Constitution Bench of Hon'ble Supreme Court of India decided the legality of Air India Statutory corporation of India Vs. United Labour etc. (1996 (9) Scale has overruled from the prospective dated and if the Management accepted the judgment i.e. Air India Statutory Corporation Ltd. Vs. United Labour Union & Others etc. 1996(9) Scale so the said judgment that is Air India case has become final mentioned in para 122(4). In light of the judgment of Constitution Bench i.e. Steel Authority of India Ltd. & other etc. Vs. National Union Water Front Workers & others etc. has nothing to do with the legality and



observation of the workmen from the date of their initial employment before 30.08.2001. Para 122(4) is reproduced as under:

"122(4). Be overrule the judgment of this court in Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator, any court including high Court, for absorption of contract labour following the judgment in Air India's case (Supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in case where such a direction has been given effect to and it has become final.

7. That it is crystal clear that Smt. Lata Devi is the workman of the management *i.e.* Air India Statutory Corporation from the date of her initial employment through Contract Labour *w.e.f.* the year 1990 so the Management have to absorb her on regular basis *w.e.f.* 1999 as per the judgment dated 6th December 1996 titled Air India Statutory Corporation etc. United Labour India and Others.

8. That Smt. Lata Devi is deemed to be workmen as Sweeper to the Management of Air India Statutory Corporation etc. from the date *i.e.* 1990 *w.e.f.* she is appointed through the contractor for providing the job of Air India Statutory Corporation etc. and the said judgment become final as per para 122(4) of the judgment of Steel Authority of India.

9. That the Management unlawfully terminated the services of Smt. Lata Devi wife of Late Shrushti Dass *w.e.f.* 13.07.1998 on the ground of alleged dual marriage without holding any enquiry and even did not pay the compensation notice etc. as per section 25(1) of I.D act. In this connection no charge sheet has been served and no proper enquiry was conducted on the alleged misconduct of dual marriage or even no notice for one month and one month pay in lieu of notice as well as compensation from the year 1990 till date of termination *i.e.* 13.07.1998 were paid to her from the date of her discontinuation of service. It is also submitted that the name mentioned in the Ration Card etc. cannot be termed as dual marriage as the Officer of issuing the ration card is not competent to declare marriage to any person or dissolve the marriage.

10. That the Hon'ble Supreme Court in Nar Singh Pal ... Appellant Vs. Union of India & others ... Respondents reported in 2000 Lab IC 1377 has held that the casual workers are also entitled the retrenchment compensation as well as regular enquiry before terminating their services. The operative para 12 & 13 are reproduced as under:

**"12. The fact that the applicant was involved in a criminal case is not disputed by the appellant. What is contended by him is that he was ultimately acquitted by the Court of Chief Judicial Magistrate. Agra and, therefore, involvement of the appellant in a criminal case could not have been made the basis for terminating his services. Since the appellant was acquitted, and it**

**was a clean acquittal, the stigma attached to him of having been prosecuted in a criminal case should have been treated to have disappeared and so argument can be allowed to be realized for justifying the order of dismissal on the ground of appellant's involvement in a criminal case.**

**13. The tribunal has also the High Court, both appears to have been moved by the fact that the appellant had encashed the cheque through which retrenchment compensation was paid to him. The intended to say that once the retrenchment compensation was accepted by the appellant the chapter stands closed and it is no longer open to the appellant to change his reinstatement. Thus we are constrained to observe, was wholly erroneous and not the correct approach. The appellant was the casual labour who had attained the temporary" status after having putting 10 years of service like any other employees, he has to stand himself, or may be his family members on the wages he got. On the termination of his services there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only meagre amount of Rs. 6,350/- was unutilized by him to sustain himself. This does not mean that he had surrendered all his consequential rights in favour of the respondent. Fundamental right under the constitution cannot be battered away. They cannot be compromised nor they can be any estoppels against the exercise of fundamental rights available under the constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and he is constitutional rights such an order cannot be sustainable.**

10. That in similar situated matter that is "MCD... Appellant Vs. Praveen Kumar Jain" reported (1999) Lab I.C. (619) the Hon'ble Supreme Court has again held the muster roll employees/casual workers and were not regular employee of the Petitioner Corporation or that of, they were not entitled to departmental enquiry as is required for regular employees of petitioner- corporation." As such a stand was taken, it is obvious that the termination order based on misconduct is not the result of any department enquiry against respondent No.1 Consequently, order of termination would failed on the ground, it is simplicitor discharge order is violative of Section 25 F of the Industrial Tribunal Act, if it is a penalty order, as contended by the appellant, it would fail on merit as not having followed the procedure of departmental enquiry in either view of the matter, the impugned order must be held to be rightly set aside by the Labour court and the decision was also rightly confirmed by the Hon'ble High Court. In the present case the department did not hold any enquiry on the misconduct framed orally and even not observed the provisions of 25 F of I.D Act 1947 so the termination of the workman Smt. Lata Devi is illegal and unjustified.

In view of this, the workman is treated as the direct employee of the Management of Airport Authority of India since 1990 and as per the judgment dated 6.12.1996 as per judgment of Hon'ble Supreme Court in the matter Air India Statutory Corporation etc. V. United Labour Union & Ors reported 1996(9) Scale. The management adopted the said judgment as per their policy and accordingly she has to be treated as direct employees of Air India Statutory Corporation etc. so she cannot be terminated simplicitor without holding the departmental enquiry and hence the termination of her service cannot be discontinued of Smt. Lata Devi w.e.f 13.07.1998 which is illegal & unjustified and she deemed to be in service w.e.f. 13.07.1998 and entitled full back wages in the regular Grade provided to the Sweepers in the said establishment from the date of her discontinuation of service w.e.f 13.07.1998 as per the judgment of the Hon'ble Supreme Court declared by the Constitution Bench in the matter Steel Authority of India & others etc.... Appellants Vs. National Water Union Front workers & others etc. etc." as per para 122(4) of the said judgment because the Management did not challenge the same and the said direction become final.

I have heard the arguments of Ld A/Rs for the parties and perused the pleadings and evidence of parties including written arguments of workman as well as principles laid down in cited rulings on behalf of workman and relevant provisions of law and settled law on the relevant points.

It is relevant to mention here that management prior to stage of evidence raised objection in the instant ID. and three other IDs. showing those to be not maintainable in the light of principle laid down by Hon'ble Supreme Court in case of steel Authority of India Ltd. Vs. National Union Water Front workers Labour and Industrial Cases 2001 Page 3656 decided on 30/8/2001 which was heard, decided and rejected by my Ld Predecessor by detailed order on 15.2.2002.

It is also relevant to mention here that after a Oral arguments A/R for the management as well as any person on behalf of management is not turning up to participate in the proceedings of the instant case with an ulterior motive to prolong the proceedings of the instant old I.D. No. 79/2000 since 11.10.13 so that only *ex parte* award could be passed against management. That could be with inordinate delay. Management has not filed reply to written arguments of workman.

It is necessary to mention here that workman Lata Devi who was casual worker on daily rated wage discontinued from service on 13.7.1998. On which date principles laid down by their Lordship of Hon'ble Supreme Court in case

Air India Statutory Corporation etc Vs United Labour Union & Ors. 1996(9) Scale, MCD Vs. Praveen Kumar Jain (1999) Lab I.C. 619 and Nar Singh Pal Vs. Union of India & Ors 2000 Lab IC 1377 were applicable in the instant case.

Reference of the instant I.D. was made on 24.9.1999. On which date principle laid down by their Lordship of Hon'ble Supreme Court in aforesaid case was the settled law of Hon'ble Supreme Court on the point, and the principle laid down by their Lordship of Hon'ble Supreme Court on in case of Steel Authority of India Ltd. Vs National Union Water Front Workers reported in Labour and Industrial cases 2001 page 3656 at page 3696 was not applicable.

Which overruled the aforesaid Judgment is inapplicable in the instant case because prior to it management itself has adopted the aforesaid principle of aforesaid Judgment of Hon'ble Supreme Court and regularised the other co-employees. In the instant case management has not regularised the workman Lata Devi but discontinued her on the count of alleged dual Marriage without any proof by way of evidence or enquiry etc.

Hence order of management is illegal and unjustified is liable to be set aside hence set aside and Reference is liable to be decided in favour of workman and against management. Which is accordingly decided in favour of workman and against management.

Workman Lata Devi is liable to be reinstated but without Back Wages in want of her pleadings and evidence of Back wages.

She is accordingly reinstated without Back wages and Management is accordingly directed to reinstate Lata Devi without Back wages after expiry of period limitation of available remedy.

Award is accordingly passed.

Dated: 13/12/2013

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 8 जनवरी, 2014

का०आ० 305.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कुद्रेमुख आयरन ओर कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण एवं श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 08/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/1/2014 को प्राप्त हुआ था।

[सं० एल-26012/11/2003-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 8th January, 2014

**S.O. 305.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2004) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Kudremukh Iron Ore Company Limited and their workman, which was received by the Central Government on 6/1/2014.

[No. L-26012/11/2003-IR(M)]  
JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED: 23rd DECEMBER 2013  
PRESENT: Shri S. N. NAVALGUND,  
Presiding Officer

#### C.R. No. 08/2004

<b>I Party</b>	<b>II Party</b>
Sri D. Vasudev Rao, S/o Sri Dhanoji Rao, R/o Barandur Village & Post, Bahdravathi Taluk, SHIMOGA.	The General Manager, Kudremukh Iron Ore Company Limited, Kudremukh. KUDREMUKH-577 142.

#### Appearances:

I Party:	Shri P. S. Ranganathan, Advocate
II Party:	Shri K. Subha Ananthi, Advocate

#### AWARD

1. The Central Government vide Order No. L-26012/11/2003-IR(M) dated 05.02.2004 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

#### SCHEDULE

"Whether the action of the management of Kudremukh Iron Ore Company Limited, Kudremukh in dismissing the services of Sri D. Vasudev Rao, w.e.f. 13.08.1996 is legal and justified? If not, to what relief the workman concerned is entitled?"

2. On receipt of the reference while registering it in C R 08/2004 when notices were issued to both sides, they entered their appearance through their respective advocates

and I party file claim statement on 02.04.2004 whereas the II party filed its counter statement on 13.09.2004.

3. After completion of the pleadings my learned predecessor having regard to certain allegations made in the claim statement touching the fairness of the Domestic Enquiry framed a Preliminary Issue as to "Whether the Domestic Enquiry held against the I Party by the II Party is fair and proper" and after receiving the evidence of both sides and hearing the arguments by order dated 15.04.2013 the said issue came to be answered in the affirmative holding that the Domestic Enquiry held against the I party by the II party is fair and proper. After the Domestic Enquiry issue was answered and the matter was posted for evidence of I party on victimisation and being not gainfully employed he filed his affidavit and by examining himself on oath as WW 1 (V) got exhibited an appreciation letter issued to him and three others for preparing a very attractive model of AG Plant dated 09.10.1995; two certificates of appreciation for voluntarily donating the blood and a certificate issued for having completed the National Physical Fitness Programme dated 04.06.1985 as Ex W-1(v) to Ex W-4(v) whereas the II party did not lead any oral or documentary evidence on these points. After close of the evidence on the point of I party victimization and being not gainfully employed the arguments addressed by the learned advocates for both sides were heard.

4. The brief facts leading to this reference and Award may be stated as under :

5. The I party while serving as Junior Operator cum Mechanic Gr. II in the II Party he was served with charge sheet dated 20.11.1996 for theft of about 300 Mtrs. Of 6.6 kv of category and 120 Sq mm. size of Copper cable which was found missing from the Barge pump house located in Lakya Dam mainly on the charge sheet submitted by the Police of Kudremukh Police Station after investigation of complaint/report made by Sh. N. Krishna Bhat, Sr. Manager (D&M) dated 28.10.1995 as under:

"The undersigned proposes to hold an enquiry against you. The substance of the imputations of misconduct as per Clause 34(13), 34(17), 34(53), 34(55), 34(56) and 34(57) of the certified standing orders of the company under which the enquiry is proposed to be held is set out in the enclosed statement of Articles of charges (Annexure - A). A list of documents by which and list of witnesses by whom the article of charges are proposed to be sustained are also enclosed (annexure 'B' & Annexure 'C' respectively).

You are hereby directed to submit in writing through proper channel a statement of defence to the undersigned within 7 days from the date of receipt of this Charge Sheet.



You are informed that an Enquiry will be held only in respect of those articles of charges which are not admitted. You should, therefore, specifically admit or deny such article of charge.

You are further informed that in the event of your failure to submit a statement of defence within the time specified in Para 2 above, it will be presumed that you have no defence to offer and the Enquiry Committee will hold the Enquiry against you ex-parte."

Enc : AA

#### STATEMENT OF ARTICLES OF CHARGES

On 28.10.95 a complaint was lodged by Sr. Mgr. (D&M), KIOCL, Kudremukh with the Kudremukh Police Station that about 300 meters of 6.6 KV category and 120 Sq. M M size of Copper cable has been missing from the Barge Pump House located in Lakya Dam. This was observed during the routine inspection/checking being done by the Staff of D & M Dept. On 26.10.95, it was observed that approximately 250 meters of Copper Cable was found missing and again during inspection/checking done on 27.10.95 along with the CISF staff, it was observed that a further quantity of 50 meters of Copper cable from the Sub-station has been removed. The approximate value of this is more than Rs. 25,000. Based on the above complaint a criminal case bearing No. 39/95 under Section 379 IPC was registered by the Kudremukh Police Station.

Consequent upon the investigations done by the Kudremukh Police Authorities it has been reported that based on the factual informations obtained by them during the course of investigation you were arrested and taken into Police Custody on 29.10.95. After making detailed enquiries from you and based on the information/written statement given by you, the Police Authorities have recovered the Copper Cable weighing approximately 67 kgs. From Quarter No. 69 A Single, Sector III in which you were residing. Apart from the above, materials *viz.* 2 Nos. Hacksaw blades, 1 Torch and Scooter bearing Registration No. CRX 3900 have been taken into Police Custody. You have also accepted before the Police Authorities that the Copper Cable pertaining to the complaint lodged by the DM Dept. have been stolen on 15.10.95 and 26.10.95 and the same have been burnt and the total quantity of Copper Cables have been distributed among the people involved in the above theft case. The materials, *i.e.* Copper Cable weighing 67 Kgs. which happen to be your share has also been confiscated from your residence which has been transported from Lakya Dam Barge Pump House in the above scooter. Subsequently, you were arrested on 7.11.1995 at around 9.45 AM and produced before the JMFC, Mudigere on 8.11.95 by the Kudremukh Police Station and have been remanded to judicial custody (Jail) until further orders.

The above acts on your part constitute misconducts under the following Clauses of the certified Standing Orders of the Company:

- 34(13) — Theft, fraud or dishonesty in connection with the Company's business or property ..... within the Company's premises.
- 34(17) — loss of Company's property.
- 34(53) — Acting in a manner prejudicial to the interests of the company.
- 34(55) — Abetments of or attempt to commit any of the above acts of misconduct.
- 34(56) — Contravention of any of the Standing Orders and/or rules or regulations made thereunder.
- 34(57) — Commission of any act subversive of discipline or good behaviour.

6. The management being not satisfied with the reply/explanation given to the charge sheet ordered to hold the Domestic Enquiry by appointing Sh. B Loka Reddy, as Chairman, Sh. H S Ramachandra as Member and Sh. N C Saha as Presenting Officer. The Enquiry Officer while issuing the notice to the I Party/CSE to appear on 03.01.2006 on his appearance while observing the formalities of preliminary hearing and recording the evidence of eight witnesses for the management and the statement of the I party/CSE and exhibiting Ex I to 15 for the management and after receiving the written brief of both the sides submitted his enquiry finding dated 07.05.1996 to the Disciplinary Authority charges levelled against the CSE being proved. The Disciplinary Authority then serving the copy of the enquiry finding and show cause notice after affording the opportunity of hearing by its order dated 31.08.1996 imposed the punishment of dismissal. Aggrieved by the said order the I party approached the RLC(C), Bangalore vide his application dated 21.07.2003 after he was acquitted by the criminal court by Judgement dated 04.04.2001 since the RLC(C) submitted FOC the Central Government made this reference for adjudication.

7. Since the Domestic Enquiry conducted is held as fair and proper the point that now remains for my consideration are :

**Point No. 1:** Whether the finding of the Enquiry Officer charge being proved is perverse?

**Point No. 2:** If not, whether the punishment imposed is disproportionate to the misconduct proved against the I Party?

**Point No. 3:** What Order/Award?

8. On appreciation of the reference schedule with the pleadings, oral and documentary evidence brought on record in the Domestic Enquiry with the arguments put forward by the learned advocates my finding on



Point No. 1 is in the affirmative, Point No. 2 does not survive for consideration and Point No. 3 as per final order for the following.

### REASONS

9. It is borne out from the documentary evidence marked for the management in the Domestic Enquiry that on a complaint filed by Sh. N Krishna Bhat, Sr. Manager (D&M) on 28.10.1995 to Sub-Inspector of Police, Kudremukh Police Station alleging that on 26.10.1995 250 mtrs. of copper cable between stuff sub-station and Barge Pump house was found missing and again on 27.10.1995 50 mtrs. of cable found missing towards sub-station valued of about Rs. 25000.00, the sub-inspector while issuing a FIR to the jurisdictional court for offence punishable under section 379 of IPC without naming the accused it appears on the information given by the I Party and five others leading to discovery of the stolen articles he charge sheeted them (six persons including the CSE) for offence punishable under Section 379 of IPC before JMFC, Mudigere and the learned JMFC, Mudigere while registering it in C C No. 566/1997 on his file after receiving the evidence led by the prosecution by his judgement dated 04.04.2001 acquitted all of them, in view of the facts narrated by me above, now it has to be seen whether in the Domestic Enquiry the II Party/Management proved the complete or part of the stolen articles were being discovered on the information given by the I Party from the quarters of the company occupied by him. In other words whether the evidence adduced by the II Party/management before the Enquiry Officer satisfy complete or part of the stolen articles were being recovered from the quarters of the company occupied by the I Party/CSE has to be seen.

10. As already adverted to by me above the management examined in all eight witnesses as PWs 1-8 in the Domestic Enquiry. Out of them the evidence of PW 1 Mr. Satish Kumar, Staff No. 3148; PW 2 Mr. R Pandey, Staff No. 7516179; PW 3 Sh. Darshan Singh, Sub- Inspector, CISF, Kudremukh Unit; PW 4, Sh. B K Kamalkh, Staff No. 4140; PW 5 Sh. G B Yadav, Staff No. 3146; PW 6 Sh. P Selvaraj being formal as to having come to know about missing of cable from the alleged points their evidence do not throw any light as to the recovery/discovery of stolen wire from the residential quarters of the company occupied by the I Party and as PW 6 N Krishna Bhat who moved the police by filing a formal complaint of missing of cable and PW 8 I S Pawar have deposed portion of the stolen article being recovered from the quarters bearing No. 69A occupied by the I Party their evidence has to be appreciated as to whether their version a portion of-the stolen wire was recovered from the quarters occupied by the CSE/I Party. The I party/CSE in his claim statement and affidavit filed in lieu of the evidence on the victimization issue has categorically stated that he who was allotted quarters bearing No. 55 was residing in the same and that the quarters bearing

No. 69 from which some of the articles alleged to have been recovered was not at all in his occupation as such he has nothing to do with such articles and as he was actively involved in the union activities he has been falsely implicated in the criminal case, whereas, the management in its counter statement though stated that I Party had exchanged his quarters with one Mr. L Ananda Murthy who was the allottee of quarters bearing No. 69 failed to place on record any evidence substantiating such exchange of quarters between the I party and Mr. L Ananda Murthy. In other words the II Party by saying in its counter statement the I Party had exchanged his quarters with Mr. L Ananda Murthy who was the allottee of quarter No. 69 having admitted that the quarters allotted to I Party was one bearing No. 55 and that he had exchanged it with Mr. L Ananda Murthy who was allotted with quarters no. 69 admitted that quarters allotted to the I Party was No. 55. When that is the admitted fact it was for the II Party management to prove by leading necessary evidence either in the Domestic Enquiry or atleast when an opportunity was given to lead evidence on Domestic Enquiry issue or victimization and I party being not gainfully employed but the II Party did not make any attempt on this aspect of its contention. Thereby the II Party case that I Party was in occupation of Quarter No. 69 and from that quarters stolen articles were recovered/ discovered falls to the ground. Even assuming that I Party was in occupation of the quarter bearing No. 69 A what is the evidence of the management to demonstrate that from that quarters the stolen articles were recovered. PW 6 Sh. N Krishna Bhat who happens to be the complainant in his evidence while narrating that on 26.10.1995 being informed by the SeIva Raj, Deputy Manager (D&M) he came to know about theft of cable from the barge pump house on 28.10.1995 he lodged a complaint reporting the same to the police when he was asked by the Presenting Officer as to whether he recognise Sh. D Vasudev Rao (*i.e.* I Party), he stating that he had seen 'him earlier on 07.11.1995 to a leading question by the Presenting Officer that 'in connection with this .case police has ceased some items from the residing house of D Vasudev Rao, A569, sector 3 on 07.11.1996, did you witness the ceaser of items from his residing house, he answers as 'YES' and that is his evidence against the I party. In other words he never stated in his evidence that the I party was residing in Quarters bearing No. 69 sector 3 and that the police on the information either given by him or some how discovered or recovered stolen articles from the quarters in his occupation. Similar is the evidence given by PW 8 IS Pawar. The management failed to examine either the investigating officer or the witnesses attesting the recovery mahajar to establish that stolen articles were discovered or recovered from the quarters in the occupation of the I party. Thereby in the presence of such vague evidence through PW 6 and 8 the Enquiry Officer in my opinion erred in coming to the conclusion the charge being proved and the same is a perverse finding. Accordingly, having arrived at conclusion of answering

this point in the Negative, the Point No. 2 does not survive for consideration.

11. In view of my finding on Point No. 1 *i.e.* the finding of the Enquiry Officer charge is proved being perverse the I party is entitle for reinstatement into service, the only point that remains for consideration is whether he is entitle for full backwages from the date of imposing the punishment of dismissal *w.e.f.* 13.08.1996. The I party in his claim statement states that after the JMFC, Mudgere acquitted him in the criminal case (the date of which is 04.04.2001) he preferred an appeal to the Director (P&P), Kudremukh Iron Ore Company by registered post and thereby though admittedly he was dismissed from service by order dated 13.08.1996 he did not prefer appeal within the prescribed time and waited till he was acquitted in the criminal case and naturally same was not considered and only there after he raised the dispute by filing an application before the RLC(C), Bangalore on 21.07.2003. Thereby he failed to explain the delay in raising the dispute for over a period of 06 years which deprive him from claiming backwages for the said period. In other words it is not reasonable and justifiable to grant him backwages for the period he slept over the punishment of dismissal. The evidence of I party that he is not gainfully employed after his impugned dismissal from service is not rebutted by any cogent evidence he being gainfully employed. Under the circumstances, I feel it just and appropriate to grant him full backwages from the date he moved the RLC(C) by his application dated 21.07.2003 till he is actually reinstated into service and also continuity of service. In the result, I pass the following.

#### ORDER

The reference is allowed holding that the action of the management of Kudremukh Iron Ore Company Ltd., Kudremukh in dismissing the services of Sri D Vasudev Rao *w.e.f.* 13.08.1996 is not legal and justified and that Sh. D Vasudev Rao, is entitle for reinstatement into service with continuity of service and full backwages from 21.07.2003 till he is actually reinstated into service adjusting the amount given to him by way of interim relief for this period with other consequential benefits that he would have received in the absence of his impugned dismissal from service.

(Dictated to UDC, transcribed by him, corrected and signed by me on 23rd December, 2013)

S.N. NAVALGUND, Presiding Officer

#### ANNEXURE—I

##### Witnesses examined in Domestic Enquiry:

- PW 1 — Satish Kumar, 4138, Asst. Mgr. (D&M)  
 PW 2 — R Pandey, Head Constable, CISF  
 PW 3 — Darshan Singh, Sub-Inspector, CISF

- PW 4 — B K Kamalaksha, 4140, DCM-I  
 PW 5 — G B Yadav, 3146, Techn. II, D&M Dept.  
 PW 6 — N K Bhat, 3186, Sr. Mg. (D&M), D & M Dept.  
 PW 7 — P Selvaraj, 2940, Dy. MGr. (D&M), D&M Dept.  
 PW 8 — I S Pawar, 2841, Jr. Eng., D & M Dept.

##### Documents exhibited In Domestic Enquiry on behalf of management:

- Ex-1 : Police complaint by Sri N K Bhat, Sr. Mgr. (D&M) dated 28.10.1995 along with FIR copy bearing C C No. 39/95 under Section 379/IPC to Kudremukh Police Station.
- Ex-2 : Report from Police Station (Kudremukh) to Sri S Murari, D(P&P), *vide* No. CC 261/95, dated 11.11.95 along with Statement from Sri D Vasudev Rao dated 7.11.95
- Ex-3 : Suspension Order bearing No. PERS/GM(PP&S)/4608/95/3549 dated 13.11.95
- Ex-4 : Photograph of Sri D Vasudev Rao showing that a case No. 39/95 under Section IPC has been registered against him by the kudremukh Police Station
- Ex-5 : Photograph showing cable cut pieces of 3 x 120 sq. mm, burnt out cable, copperingot moulds
- Ex-6 : Letter No. CC 291/95 dated 30.11.95 from the Sub-Inspector, Kudremukh Police Station forwarding the photographs indicated at SI. No. 4 & 5 (Ex No. 4 & 5).
- Ex-7 : Charge Sheet No. PERS/GM(PP&S)/01/4608/3568 dated 29.11.95, along with Statement of articles (ANNEXURE A), list of documents (ANNEXURE B), list of witnesses (ANNEXURE C), Photocopy of Police Report dtd. 11.11.95 and photocopy of statement of Sri D Vasudeva Rao dtd. 7.11.95 in the Police Station. Photocopy of complaint from Sr. Mgr. (D&M) dated 20.10.95, photocopy of FIR CC No. 39/95 under Section 379/IPC.
- Ex-8 : Request for time extension from Sri D. Vasudev Rao dtd. 5.12.95
- Ex-9 : Grant of time extension *vide* Ltr No. PERS/GM(PP&S)/01/4608/7489 dtd. 7.12.95
- Ex-10 : Explanation from Sri D Vasudev Rao dtd. 11.12.95 received *vide* No. 853 dtd. 16.12.95.
- Ex-11 : Diagram showing the cross section of the said cable. Drawing No. CABLE-342 dtd. 4.10.78 (*vide* Spec. No. 7502-1444/V-2187)

- Ex-12 : Specimen copy of material acceptance certificate No. 12738/1517 dtd. 6.11.78 showing details of the specification of the above cable.
- Ex-13 : Copy of work order No. S/Cont/1584/3527/1962 dtd. 29.8.92 (emergency recommissioning of Barge Pump House & restoration of power supply to 4 pole feeder of Township supply).
- Ex-14 : Copy of work Order No. S/Cont/2063/4538/532 dtd 7.11.95 retrieving of 6.6 KV cable at RWT & No. DM(C)/T&C/1575 dtd. 14.11.95 final deviation statement for retrieving of 6.6 KV cable at RWT.
- Ex-15 : 5 photographs taken after the theft in Barge Pump House area on 27.10.95.

**Documents exhibited in Domestic Enquiry on behalf of the CSE:**

Nil

नई दिल्ली, 8 जनवरी, 2014

**का०आ० 306.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिंदुस्तान पेट्रोलियम कॉरपोरेशन, धारवाड़ के प्रबंधन के संबंध में निर्योक्तों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 70/2000) प्रकाशित करती है जो केन्द्रीय सरकार को 6.1.2014 को प्राप्त हुआ था।

[सं एल-30012/60/2000-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 8th January, 2014

**S.O. 306.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2000) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation, Dharwad and their workman, which was received by the Central Government on 6-1-2014.

[No. L-30012/60/2000-IR(M)]  
JOHAN TOPNO, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
BANGALORE**

DATED : 9th December, 2013

PRESENT : Shri S.N. NAVALGUND,  
Presiding Officer

**C R No. 70/2000**

**I Party**

Sri N C Sortur,  
C/o Sh. B K Kale, Advocate,  
Durga View,  
Maratha Colony,  
DHARWAD.

**II Party**

The Regional Manager  
(LPG), Hindustan  
Petroleum Corpn. R O, P B  
No. 24, 165/166, Dharwar,  
DHARWAD

**Appearances:**

I Party : Shri Muralidhara  
Advocate

II Party : Shri CM Desai  
Advocate

**AWARD**

1. The Central Government *vide* order No. L-30012/60/2000-IR(M) dated 18.09.2000 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

**SCHEDULE**

"Whether the action of the management of Hindustan Petroleum Corporation Ltd in terminating the service of Shri N C Sortur justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference while registering it in CR 70/2000 when notices were issued to both the sides, they entered their appearance through their respective advocates and I party claim statement came to be filed on 21.08.2001 and counter statement of the II party on 11.01.2002.

3. The brief facts leading to this reference and award may be stated as under :

"The I party while serving as General Workman at Hubli LPG Plant of the II Party he was served with the charge sheet dated 21.08.1998 as under:

**CHARGESHEET**

It has been reported against you that you have been remaining absent unauthorisedly effect 6.7.98. You were advised to report for duty immediately *vide* letters LPG/PRN/OPS dated 13/7/98, 20/7/98 and LPG/KS/PERS dated 11/8/98. Despite the above referred letters, you have not reported for duty as of date.

It is further reported that during the period April 97 to 2/7/98, you remained absent unauthorisedly as mentioned below:

APRIL 97	1 DAY
MAY 97	3 DAYS

JUNE 97	5 DAYS
JULY 97	5 DAYS
AUGUST 97	5 DAYS
SEPT 97	12 DAYS
OCT 97	13 DAYS
NOV 97	10 DAYS
DEC 97	4 DAYS
JAN 98	6 DAYS
FEB 98	13 DAYS
MAR 98	7 DAYS
APR 98	8 DAYS
MAY 98	19 DAYS
JUNE 98	25 DAYS
JULY 98	2 DAYS

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145 DAYS

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The above unauthorised absenteeism is in addition to 87 days of leave availed by you, during the said period.

You were vide following letters advised to improve your attendance.

(1) Letter LPG/KS/P&A dated 15/11/97 from Plant Manager — Hubli LPG.

(2) Letter LPG/KS/OPS dated 17/11/97 from Plant Manager — Hubli LPG.

(3) Letter LPG/KS/PERS dated 4/3/98 from Plant Manager — Hubli LPG.

(4) Letter BGMRO/VDM/PERS dated 6/3/98 from SRM - Belgaum RO.

(5) Letter LPG/PRN/OPS dated 13/7/98 from Plant Manager — Hubli LPG.

(6) Letter LPG/PRN/OPS dated 20/7/98 from Plant Manager — Hubli LPG.

Despite above Communications and the assurances given by you orally and *vide* your letter dated 17.11.97, there is no improvement in your attendance as you continue to be remaining absent unauthorisedly, which besides affecting day to-day operations, is also affecting the discipline of the Plant.

The above act on your part amounts to following misconduct as per provisions of standing orders applicable to you and accordingly you are charged for the same.

CLAUSE 31(7) : "Habitual absence without leave or absence without leave for more than 21 consecutive days

or over staying the sanctioned leave without sufficient grounds of proper and satisfactory explanation".

You are hereby advised to submit your written explanation within 3 days from the date of receipt of this charge sheet. In case you failed to submit your written explanation as stipulated above, it will be presumed that you have no explanation whatsoever to offer and management will initiate further action as deemed fit."

4. To the said charge sheet the I party who wrote a letter dated 12.09.1998 to the Disciplinary Authority stating that he had already sent a letter to him stating that due to ill health he could not attend the duties and will attend duty within 10 days with written explanation requesting to give 10 days time and as later did not give any reply the Disciplinary Authority while appointing Sh. S C Malhotra as Enquiry Officer and Sh. K Srinivas as Presenting Officer ordered for holding Domestic Enquiry and then the Enquiry Officer while causing notice to the I Party regarding schedule of the enquiry since he went on sending requests to postpone the enquiry stating that he is not keeping well without affixing any medical certificate ultimately on 24.02.1999 the Enquiry Officer placing him *ex parte* receiving the documentary evidence produced by the Presenting Officer marking them as Exhibit No. 1 to 29 after receiving the written brief from the Presenting Officer submitted his enquiry finding dated 02.07.1999 the charge being proved. Then the Disciplinary Authority while sending copy of an enquiry finding issued second show cause notice to which the I Party gave his reply dated 12.08.1999 stating that he could not attend the duties due to his ill health and the Disciplinary Authority after giving him opportunity of hearing by his order dated 15.10.1999 imposed punishment of discharge from the corporation services as per Clause 32(f) of the standing order and communicated the same along with a cheque for Rs. 5830.00 drawn on State Bank of India in lieu of one month's notice. Aggrieved by the said order when the I Party preferred appeal to the Director (Marketing) he affording an opportunity of hearing to the I Party by his order dated 02.02.2000 affirmed the order of the Disciplinary Authority and dismissed the appeal. Thereafter, the I Party raised the dispute before the ALC(C), Hubli and as the conciliation failed the Central Government made this reference for adjudication.

5. The I party in his claim statement alleges that he was constrained to be on leave due to mother's and child's ill health and various domestic reasons from April 1997 to July 1998 and that being a disciplined workman used to keep his official superiors informed of his requirement of leave in advance and follow it up with formal application and that he gave reply to the charge sheet and another letter dated 28.12.1998 explaining the reasons for his absence from duty and in spite of it Disciplinary Authority initiated Domestic Enquiry and Enquiry Officer in spite of his request to postpone the enquiry on ground of ill-health



hurriedly concluded the enquiry and submitted his finding and thereafter Disciplinary Authority without considering his documents passed the order of punishment and similarly the Appellate Authority affirmed the same mechanically. *Inter alia*, in the counter statement filed for the II Party it is contended the I Party who joined the service on 13.04.1987 was all along remaining absent unauthorisedly the detail of which is as under :

Year	CL	SL with Pay	PL	SL without pay	Unauthorised Absent	Total
1988	10	35	32	3	4	84
1989	11	14	32	6	111	174
1990	10	10	32	5	253	310
1991	0	0	0	0	354	354
1992	0	0	0	0	355	355
1993	10	12	12	0	20	54
1994	10	12	43	0	46	111
1995	12	12	47	0	130	201
1996	11	13	46	0	120	190
1997	9	12	33	0	58	112
1998	9	3	21	0	106	139
Total	92	123	298	14	1557	2084

thus his total absenteeism worked out to 2084 days equivalent to 6 years out of his 11 years of service and as inspite of counselling and issuing innumerable letter to improve himself he did not show any improvement and on the other hand from April 1997 to June 1998 he remained absent even without applying leave which amounted to misconduct as provided in clause 31(7) of the standing Order which reads as under:

CLAUSE 31(7) : Habitual absence without leave or absence without leave for more than 21 consecutive days or over staying the sanctioned leave without sufficient grounds of proper and satisfactory explanation.

6. Since inspite of service of charge sheet he neither attended the duty and rest contended by giving sending a letter stating that he would give proper reply within 10 days did not give any reply and even avoided to participate in the enquiry without any reasons and Enquiry Officer having regard to the documents placed before him held the charge being proved and even to the show cause notice since he failed to satisfy the Disciplinary Authority reasons for his unauthorised absence the Disciplinary Authority passed the impugned order of discharge from service and communicated the same with a cheque for Rs. 5830.00 in lieu of one month's notice and even in appeal since he failed to satisfy the Appellate Authority as to how the enquiry finding or the punishment imposed by the Disciplinary Authority was wrong or erroneous he having affirmed the same there are no reasons to interfere either in the finding of the Enquiry Officer or the order of punishment

imposed by the Disciplinary Authority and affirmed by the Appellate Authority. Thus, the II Party prayed for rejection of the reference.

7. Since the Domestic Enquiry conducted by the II Party against the I Party by order of my predecessor dated 11.05.2007 is held as Fair and Proper, after the I Party lead evidence by filing his affidavit being not gainfully employed after his discharge from service and he was cross-examined by the learned advocate appearing for the II Party the arguments addressed by both sides were heard. In view of the facts narrated by me above, the points now remain for my consideration are:

1. Whether the finding of the Enquiry Officer charge being proved is perverse?
2. If not, whether the punishment of discharge imposed by the Disciplinary Authority and confirmed by the Appellate Authority is disproportionate?
3. What Order/Award?

8. On appreciation of the evidence placed in the Domestic Enquiry by the management with the arguments put forward by the advocates for both sides, my finding on point on No. 1 and 2 are in the Negative and Point No.3 is as per final order for the following.

### REASONS

9. There is no dispute the I party who joined the service of the corporation on 13.04.1987 availed Casual Leave, Sick Leave with Pay, Privilage Leave, Sick Leave without Pay and Absent without applying for any sort of leave from 1988 to 1998 as given in the following table vaguely alleging that he used to keep his official superiors informed and follow it up with formal applications. The management by producing the attendance register, letters sent to CSE satisfied the Enquiry Officer about allegations about his absent from duties availing Casual Leave, Sick Leave with Pay, Privilege Leave, Sick Leave without pay and Absent without applying for sort of leave and as the I Party by his failure to appear before the Enquiry Officer failed to satisfy him that he had remained absent by giving information either before remaining absent or subsequently. When admittedly the I Party from April 1997 to 02.07.1998 remained continuously absent and charge sheet was served on him it was his duty to explain as to why the same should not be treated as unauthorised absence. In the absence of the explanation of the I Party in the Domestic Enquiry in my opinion the Enquiry Officer did not err in giving his finding the charge being proved. Since as per clause 31(7) of the standing Orders habitual absence without leave or absence without leave for more than 21 consecutive days or overstaying the sanctioned leave without sufficient ground or proper and satisfactory explanation amounts to misconduct, the Enquiry Officer from facts is justified in holding the charge being proved.

10. Since as narrated above in the table the I Party made it a habit right from the first year of his service after exhausting all sorts of leave that he could avail he remained unauthorisedly absent and the management giving him warning used to allow him to report to duty and tolerated him for more than 10 years and as from April 1997 till July 1998 when he did not report to duty at all even without applying for leave the bank constrained to initiate the disciplinary enquiry and after receiving the finding of the Enquiry Officer the Disciplinary Authority after serving the show cause notice and receipt of reply wherein no justification is made out by the I Party imposed the punishment of discharge which in my opinion cannot be found fault with. Under the circumstances, I arrive at conclusion of answering the Point No. 1 and 2 in the Negative and pass the following

### ORDER

The reference is Rejected holding that the action of the management of Hindustan Petroleum Corporation Ltd. in terminating the services of Shri N C Sortur is justified and that he is not entitle for any relief.

(Dictated to U D C, transcribed by him, corrected and signed by me on 9th December 2013)

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 9 जनवरी, 2014

**का०आ० 307.**—जबकि मैसर्स बिलटेक बिल्डिंग एलिमेंट्स लिमिटेड. [कोड संख्या एचआर/6857 के अंतर्गत फरीदाबाद क्षेत्र में] (एतदुपरान्त प्रतिष्ठान के रूप में संदर्भित) ने कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (एतदुपरान्त अधिनियम के रूप में संदर्भित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है।

2. और जबकि केन्द्रीय सरकार के विचार में, अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में विनिर्दिष्ट नियमों की तुलना में कर्मचारियों के लिए कम उपयुक्त नहीं हैं और कर्मचारी उक्त अधिनियम अथवा कर्मचारी भविष्य निधि योजना, 1952 (एतदुपरान्त योजना के रूप में संदर्भित) के अंतर्गत सदृश स्वरूप के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में दी जाने वाली अन्य भविष्य निधि प्रसुविधाओं का भी लाभ उठा रहे हैं।

3. अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 17 की उप धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इस संबंध में समय-समय पर विनिर्दिष्ट शर्तों के अध्यधीन, उक्त प्रतिष्ठान को 01.01.2001 से अगली अधिसूचना तक उक्त योजना के सभी उपबंधों के प्रभाव से छूट प्रदान करती है।

[सं. एस-35015/19/2013-एसएस-II]

सुभाष कुमार, अवर सचिव

New Delhi, the 9th January, 2014

**S.O. 307.**—Whereas M/s. Biltech Building Elements Limited [under Code No. HR/6857 in Faridabad region] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of section 17 of the said Act and subject to the conditions specified in this regard from time to time, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 01.01.2001 until further notification.

[No.S-35015/19/2013-SS-II]

SUBHASH KUMAR, Under Secy.

नई दिल्ली, 9 जनवरी, 2014

**का०आ० 308.**—जबकि मैसर्स बीबीसी वर्ल्ड (इंडिया) प्राईवेट लिमिटेड, [कोड संख्या डीएल/937458 के अंतर्गत दिल्ली (दक्षिण) क्षेत्र में] एतदुपरान्त प्रतिष्ठान के रूप में संदर्भित ने कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (एतदुपरान्त अधिनियम के रूप में संदर्भित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है।

2. और जबकि केन्द्रीय सरकार के विचार में, अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में विनिर्दिष्ट नियमों की तुलना में कर्मचारियों के लिए कम उपयुक्त नहीं हैं और कर्मचारी उक्त अधिनियम अथवा कर्मचारी भविष्य निधि योजना, 1952 (एतदुपरान्त योजना के रूप में संदर्भित) के अंतर्गत सदृश स्वरूप के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में दी जाने वाली अन्य भविष्य निधि प्रसुविधाओं का भी लाभ उठा रहे हैं।

3. अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 17 की उप-धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इस संबंध में समय-समय पर विनिर्दिष्ट शर्तों के अध्यधीन, उक्त प्रतिष्ठान को 01.04.2009 से अगली अधिसूचना तक उक्त योजना के सभी उपबंधों के प्रभाव से छूट प्रदान करती है।

[सं. एस-35015/9/2010-एसएस-II]

सुभाष कुमार, अवर सचिव

New Delhi, the 9th January, 2014

**S.O. 308.**—Whereas M/s. BBC World (India) Private Limited [under Code No. DL/937458 in Delhi (south) region] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident funds of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident funds benefits provided under the said Act or under the Employees Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of section 17 of the said Act and subject to the conditions specified in this regard from time to time, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 01.04.2009 until further notification.

[No.S-35015/9/2010-SS-II]  
SUBHASH KUMAR, Under Secy.

नई दिल्ली, 9 जनवरी, 2014

**का०आ० 309.**—जबकि मैसर्स मैक्स इंडिया लिमिटेड, [कोड संख्या पीएन/11332 के अंतर्गत जालंधर क्षेत्र में] (एतदुपरान्त प्रतिष्ठान के रूप में संदर्भित) ने कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (एतदुपरान्त अधिनियम के रूप में संदर्भित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है।

2. और जबकि केन्द्रीय सरकार के विचार में, अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में विनिर्दिष्ट नियमों की तुलना में कर्मचारियों के लिए कम उपयुक्त नहीं है और कर्मचारी उक्त अधिनियम अथवा कर्मचारी भविष्य निधि योजना, 1952 (एतदुपरान्त अधिनियम के रूप में संदर्भित) के अंतर्गत सदृश स्वरूप के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में दी जाने वाली अन्य भविष्य निधि प्रसुविधाओं का भी लाभ उठा रहे हैं।

3. अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 17 की उपधारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इस संबंध में समय-समय पर विनिर्दिष्ट शर्तों के अधीन, उक्त प्रतिष्ठान को 01.10.1993 से अगली अधिसूचना तक उक्त योजना के सभी उपबंधों के प्रभाव से छूट प्रदान करती है।

[सं. एस-35015/18/2013-एसएस-II]  
सुभाष कुमार, अवर सचिव

New Delhi, the 9th January, 2014

**S.O. 309.**—Whereas M/s. Max India Limited [under Code No. PN/11332 in Jalandhar region] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act.)

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of section 17 of the said Act and subject to the conditions specified in this regard from time to time, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 01-10-1993 until further notification.

[No. S-35015/18/2013-SS-II]  
SUBHASH KUMAR, Under Secy.

आदेश

नई दिल्ली, 9 जनवरी, 2014

**का०आ० 310.**—जब केन्द्रीय सरकार का यह मत है कि सार्वजनिक क्षेत्र की बीमा कंपनियों के प्रबंधनों और उनके कामगारों के बीच एक औद्योगिक विवाद था।

और जबकि केन्द्रीय सरकार का यह मत है कि उक्त विवाद में राष्ट्रीय महत्व का प्रश्न अंतर्बलित है और इसका न्यायनिर्णयन एक राष्ट्रीय औद्योगिक न्यायाधिकरण द्वारा किया जाना चाहिए।

और जबकि केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कोलकाता में मुख्यालय सहित श्रम मंत्रालय के आदेश संख्या एल-17011/4/2006-आईआर(एम) दिनांक 14.2.2007 तथा इसके शुद्धिपत्र दिनांक 29.6.2007 द्वारा राष्ट्रीय औद्योगिक अधिकरण गठित किया तथा न्यायमूर्ति श्री सी.पी. मिश्रा को इसके पीठासीन अधिकारी के रूप में नियुक्त किया और उक्त अधिनियम की धारा 10 की उप धारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्यायनिर्णयन हेतु उक्त राष्ट्रीय औद्योगिक अधिकरण को निर्दिष्ट कर दिया;

और जबकि न्यायमूर्ति श्री सी.पी. मिश्रा ने उक्त राष्ट्रीय औद्योगिक अधिकरण का कार्यभार 02.04.2009 को त्याग दिया;

अतः, अब, न्यायमूर्ति श्री दीपक साहा रे के इसके पीठासीन अधिकारी से युक्त कोलकाता में मुख्यालय सहित राष्ट्रीय औद्योगिक अधिकरण गठित किया जाता है और उपर्युक्त विवाद को न्यायनिर्णयन हेतु उपर्युक्त राष्ट्रीय औद्योगिक अधिकरण को इस निदेश के साथ निर्दिष्ट किया जाता है कि न्यायमूर्ति श्री दीपक साहा रे इस मामले में उस चरण से आगे कार्यवाही करेंगे जिस चरण पर यह इसे न्यायमूर्ति श्री सी. पी मिश्रा द्वारा छोड़ा गया था इसे तदनुसार निपटाएंगे।

[सं० एल-17011/4/2006-आईआर(एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 9th January, 2014

**S.O. 310.**—Whereas the Central Govt. is of the opinion that an industrial dispute existed between the management of Public Sector Insurance Companies and their workmen:

And whereas the Central Government is of the opinion that the above dispute involved a question of national importance and should be adjudicated by a National Industrial Tribunal;

And whereas the Central Government in exercise of the powers conferred by Section 7B of the I.D. Act, 1947 (14 of 1947) constituted a National Industrial Tribunal *vide* Ministry of Labour Order No. L-17011/4/2006-IR(M) dated 14.2.2007 & it's Corrigendum dated 29.6.2007 with headquarters at Kolkata and appointed Justice Shri C.P. Mishra as its Presiding Officer and in exercise of the powers conferred by Sub-section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication;

And whereas Justice Shri C.P. Mishra relinquished from the charge of the said National Industrial Tribunal on 2.4.2009;

Now, therefore, a National Industrial Tribunal is constituted with Headquarters at Kolkata with Justice Shri Dipak Saha Ray as its Presiding Officer and the above said dispute is referred to the above said National Industrial Tribunal for adjudication with a direction that Justice Shri Dipak Saha Ray shall proceed in the matter from the stage at which it was left by Justice Shri C.P. Mishra and dispose of the same accordingly.

[No. L-17011/4/2006-IR(M)]  
JOHAN TOPNO, Under Secy.